

SB3447



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3447

Introduced 2/10/2010, by Sen. Bill Brady

SYNOPSIS AS INTRODUCED:

775 ILCS 5/2-104

from Ch. 68, par. 2-104

Amends the Illinois Human Rights Act. In the Employment Article, provides that the Act does not apply to a religious organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society with respect to employment qualifications based on religion or sexual orientation. Effective January 1, 2011.

LRB096 17931 AJO 33299 b

A BILL FOR

1 AN ACT concerning human rights.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Human Rights Act is amended by
5 changing Section 2-104 as follows:

6 (775 ILCS 5/2-104) (from Ch. 68, par. 2-104)

7 Sec. 2-104. Exemptions.

8 (A) Nothing contained in this Act shall prohibit an
9 employer, employment agency or labor organization from:

10 (1) Bona Fide Qualification. Hiring or selecting
11 between persons for bona fide occupational qualifications
12 or any reason except those civil-rights violations
13 specifically identified in this Article.

14 (2) Veterans. Giving preferential treatment to
15 veterans and their relatives as required by the laws or
16 regulations of the United States or this State or a unit of
17 local government.

18 (3) Unfavorable Discharge From Military Service. Using
19 unfavorable discharge from military service as a valid
20 employment criterion when authorized by federal law or
21 regulation or when a position of employment involves the
22 exercise of fiduciary responsibilities as defined by rules
23 and regulations which the Department shall adopt.

1 (4) Ability Tests. Giving or acting upon the results of
2 any professionally developed ability test provided that
3 such test, its administration, or action upon the results,
4 is not used as a subterfuge for or does not have the effect
5 of unlawful discrimination.

6 (5) Merit and Retirement Systems.

7 (a) Applying different standards of compensation,
8 or different terms, conditions or privileges of
9 employment pursuant to a merit or retirement system
10 provided that such system or its administration is not
11 used as a subterfuge for or does not have the effect of
12 unlawful discrimination.

13 (b) Effecting compulsory retirement of any
14 employee who has attained 65 years of age and who, for
15 the 2-year period immediately preceding retirement, is
16 employed in a bona fide executive or a high
17 policymaking position, if such employee is entitled to
18 an immediate nonforfeitable annual retirement benefit
19 from a pension, profit-sharing, savings, or deferred
20 compensation plan, or any combination of such plans of
21 the employer of such employee, which equals, in the
22 aggregate, at least \$44,000. If any such retirement
23 benefit is in a form other than a straight life annuity
24 (with no ancillary benefits) or if the employees
25 contribute to any such plan or make rollover
26 contributions, the retirement benefit shall be

1 adjusted in accordance with regulations prescribed by
2 the Department, so that the benefit is the equivalent
3 of a straight life annuity (with no ancillary benefits)
4 under a plan to which employees do not contribute and
5 under which no rollover contributions are made.

6 (c) Until January 1, 1994, effecting compulsory
7 retirement of any employee who has attained 70 years of
8 age, and who is serving under a contract of unlimited
9 tenure (or similar arrangement providing for unlimited
10 tenure) at an institution of higher education as
11 defined by Section 1201(a) of the Higher Education Act
12 of 1965.

13 (6) Training and Apprenticeship programs. Establishing
14 an educational requirement as a prerequisite to selection
15 for a training or apprenticeship program, provided such
16 requirement does not operate to discriminate on the basis
17 of any prohibited classification except age.

18 (7) Police and Firefighter/Paramedic Retirement.
19 Imposing a mandatory retirement age for
20 firefighters/paramedics or law enforcement officers and
21 discharging or retiring such individuals pursuant to the
22 mandatory retirement age if such action is taken pursuant
23 to a bona fide retirement plan provided that the law
24 enforcement officer or firefighter/paramedic has attained:

25 (a) the age of retirement in effect under
26 applicable State or local law on March 3, 1983; or

1 (b) if the applicable State or local law was
2 enacted after the date of enactment of the federal Age
3 Discrimination in Employment Act Amendments of 1996
4 (P.L. 104-208), the age of retirement in effect on the
5 date of such discharge under such law.

6 This paragraph (7) shall not apply with respect to any
7 cause of action arising under the Illinois Human Rights Act
8 as in effect prior to the effective date of this amendatory
9 Act of 1997.

10 (8) Police and Firefighter/Paramedic Appointment.
11 Failing or refusing to hire any individual because of such
12 individual's age if such action is taken with respect to
13 the employment of an individual as a firefighter/paramedic
14 or as a law enforcement officer and the individual has
15 attained:

16 (a) the age of hiring or appointment in effect
17 under applicable State or local law on March 3, 1983;
18 or

19 (b) the age of hiring in effect on the date of such
20 failure or refusal to hire under applicable State or
21 local law enacted after the date of enactment of the
22 federal Age Discrimination in Employment Act
23 Amendments of 1996 (P.L. 104-208).

24 As used in paragraph (7) or (8):

25 "Firefighter/paramedic" means an employee, the duties
26 of whose position are primarily to perform work directly

1 connected with the control and extinguishment of fires or
2 the maintenance and use of firefighting apparatus and
3 equipment, or to provide emergency medical services,
4 including an employee engaged in this activity who is
5 transferred to a supervisory or administrative position.

6 "Law enforcement officer" means an employee, the
7 duties of whose position are primarily the investigation,
8 apprehension, or detention of individuals suspected or
9 convicted of criminal offenses, including an employee
10 engaged in this activity who is transferred to a
11 supervisory or administrative position.

12 (9) Citizenship Status. Making legitimate distinctions
13 based on citizenship status if specifically authorized or
14 required by State or federal law.

15 (B) With respect to any employee who is subject to a
16 collective bargaining agreement:

17 (a) which is in effect on June 30, 1986,

18 (b) which terminates after January 1, 1987,

19 (c) any provision of which was entered into by a labor
20 organization as defined by Section 6(d)(4) of the Fair
21 Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

22 (d) which contains any provision that would be
23 superseded by this amendatory Act of 1987 (Public Act
24 85-748),

25 such amendatory Act of 1987 shall not apply until the
26 termination of such collective bargaining agreement or January

1 1, 1990, whichever occurs first.

2 (C) (1) For purposes of this Act, the term "handicap" shall
3 not include any employee or applicant who is currently engaging
4 in the illegal use of drugs, when an employer acts on the basis
5 of such use.

6 (2) Paragraph (1) shall not apply where an employee or
7 applicant for employment:

8 (a) has successfully completed a supervised drug
9 rehabilitation program and is no longer engaging in the
10 illegal use of drugs, or has otherwise been rehabilitated
11 successfully and is no longer engaging in such use;

12 (b) is participating in a supervised rehabilitation
13 program and is no longer engaging in such use; or

14 (c) is erroneously regarded as engaging in such use,
15 but is not engaging in such use.

16 It shall not be a violation of this Act for an employer to
17 adopt or administer reasonable policies or procedures,
18 including but not limited to drug testing, designed to ensure
19 that an individual described in subparagraph (a) or (b) is no
20 longer engaging in the illegal use of drugs.

21 (3) An employer:

22 (a) may prohibit the illegal use of drugs and the use
23 of alcohol at the workplace by all employees;

24 (b) may require that employees shall not be under the
25 influence of alcohol or be engaging in the illegal use of
26 drugs at the workplace;

1 (c) may require that employees behave in conformance
2 with the requirements established under the federal
3 Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and
4 the Drug Free Workplace Act;

5 (d) may hold an employee who engages in the illegal use
6 of drugs or who is an alcoholic to the same qualification
7 standards for employment or job performance and behavior
8 that such employer holds other employees, even if any
9 unsatisfactory performance or behavior is related to the
10 drug use or alcoholism of such employee; and

11 (e) may, with respect to federal regulations regarding
12 alcohol and the illegal use of drugs, require that:

13 (i) employees comply with the standards
14 established in such regulations of the United States
15 Department of Defense, if the employees of the employer
16 are employed in an industry subject to such
17 regulations, including complying with regulations (if
18 any) that apply to employment in sensitive positions in
19 such an industry, in the case of employees of the
20 employer who are employed in such positions (as defined
21 in the regulations of the Department of Defense);

22 (ii) employees comply with the standards
23 established in such regulations of the Nuclear
24 Regulatory Commission, if the employees of the
25 employer are employed in an industry subject to such
26 regulations, including complying with regulations (if

1 any) that apply to employment in sensitive positions in
2 such an industry, in the case of employees of the
3 employer who are employed in such positions (as defined
4 in the regulations of the Nuclear Regulatory
5 Commission); and

6 (iii) employees comply with the standards
7 established in such regulations of the United States
8 Department of Transportation, if the employees of the
9 employer are employed in a transportation industry
10 subject to such regulations, including complying with
11 such regulations (if any) that apply to employment in
12 sensitive positions in such an industry, in the case of
13 employees of the employer who are employed in such
14 positions (as defined in the regulations of the United
15 States Department of Transportation).

16 (4) For purposes of this Act, a test to determine the
17 illegal use of drugs shall not be considered a medical
18 examination. Nothing in this Act shall be construed to
19 encourage, prohibit, or authorize the conducting of drug
20 testing for the illegal use of drugs by job applicants or
21 employees or making employment decisions based on such test
22 results.

23 (5) Nothing in this Act shall be construed to encourage,
24 prohibit, restrict, or authorize the otherwise lawful exercise
25 by an employer subject to the jurisdiction of the United States
26 Department of Transportation of authority to:

1 (a) test employees of such employer in, and applicants
2 for, positions involving safety-sensitive duties for the
3 illegal use of drugs and for on-duty impairment by alcohol;
4 and

5 (b) remove such persons who test positive for illegal
6 use of drugs and on-duty impairment by alcohol pursuant to
7 subparagraph (a) from safety-sensitive duties in
8 implementing paragraph (3).

9 (D) The provisions of this Act do not apply to a religious
10 organization, association, or society or any nonprofit
11 institution or organization operated, supervised, or
12 controlled by or in conjunction with a religious organization,
13 association, or society with respect to employment
14 qualifications based on religion or sexual orientation.

15 (Source: P.A. 95-331, eff. 8-21-07.)

16 Section 99. Effective date. This Act takes effect January
17 1, 2011.