



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3773

Introduced 2/17/2023, by Rep. Jaime M. Andrade, Jr.

SYNOPSIS AS INTRODUCED:

775 ILCS 5/2-101

775 ILCS 5/2-102

815 ILCS 505/2BBBB new

from Ch. 68, par. 2-102

Amends the Illinois Human Rights Act. Provides that an employer that uses predictive data analytics in its employment decisions may not consider the applicant's race or zip code when used as a proxy for race to reject an applicant in the context of recruiting, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment. Provides that nothing in the Act shall be construed to prevent the use of predictive data analytics to support the inclusion of diverse candidates in making employment decisions. Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that a person or entity that relies either partially or fully on predictive data analytics to determine a consumer's creditworthiness may not allow the use of information about the consumer that assigns specific risk factors to the consumer's race or zip code resulting in rejection of credit or other adverse credit-related action to a consumer. Provides that a person or entity that uses predictive data analytics to determine the creditworthiness of more than 50 consumers in a calendar year who are State residents shall devise procedures to ensure that it does not consider information that assigns specific risk factors to a consumer's race or zip code when rejecting or taking other adverse action on a consumer's application for credit. Provides that a person or entity that violates the provisions commits an unlawful practice within the meaning of the Act.

LRB103 27562 SPS 53938 b

1 AN ACT concerning business.

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 Sections 2-101 and 2-102 as follows:

6 (775 ILCS 5/2-101)

7 Sec. 2-101. Definitions. The following definitions are
8 applicable strictly in the context of this Article.

9 (A) Employee.

10 (1) "Employee" includes:

11 (a) Any individual performing services for
12 remuneration within this State for an employer;

13 (b) An apprentice;

14 (c) An applicant for any apprenticeship.

15 For purposes of subsection (D) of Section 2-102 of
16 this Act, "employee" also includes an unpaid intern. An
17 unpaid intern is a person who performs work for an
18 employer under the following circumstances:

19 (i) the employer is not committed to hiring the
20 person performing the work at the conclusion of the
21 intern's tenure;

22 (ii) the employer and the person performing the
23 work agree that the person is not entitled to wages for

1 the work performed; and

2 (iii) the work performed:

3 (I) supplements training given in an
4 educational environment that may enhance the
5 employability of the intern;

6 (II) provides experience for the benefit of
7 the person performing the work;

8 (III) does not displace regular employees;

9 (IV) is performed under the close supervision
10 of existing staff; and

11 (V) provides no immediate advantage to the
12 employer providing the training and may
13 occasionally impede the operations of the
14 employer.

15 (2) "Employee" does not include:

16 (a) (Blank);

17 (b) Individuals employed by persons who are not
18 "employers" as defined by this Act;

19 (c) Elected public officials or the members of
20 their immediate personal staffs;

21 (d) Principal administrative officers of the State
22 or of any political subdivision, municipal corporation
23 or other governmental unit or agency;

24 (e) A person in a vocational rehabilitation
25 facility certified under federal law who has been
26 designated an evaluatee, trainee, or work activity

1 client.

2 (B) Employer.

3 (1) "Employer" includes:

4 (a) Any person employing one or more employees
5 within Illinois during 20 or more calendar weeks
6 within the calendar year of or preceding the alleged
7 violation;

8 (b) Any person employing one or more employees
9 when a complainant alleges civil rights violation due
10 to unlawful discrimination based upon his or her
11 physical or mental disability unrelated to ability,
12 pregnancy, or sexual harassment;

13 (c) The State and any political subdivision,
14 municipal corporation or other governmental unit or
15 agency, without regard to the number of employees;

16 (d) Any party to a public contract without regard
17 to the number of employees;

18 (e) A joint apprenticeship or training committee
19 without regard to the number of employees.

20 (2) "Employer" does not include any place of worship,
21 religious corporation, association, educational
22 institution, society, or non-profit nursing institution
23 conducted by and for those who rely upon treatment by
24 prayer through spiritual means in accordance with the
25 tenets of a recognized church or religious denomination
26 with respect to the employment of individuals of a

1 particular religion to perform work connected with the
2 carrying on by such place of worship, corporation,
3 association, educational institution, society or
4 non-profit nursing institution of its activities.

5 (C) Employment Agency. "Employment Agency" includes both
6 public and private employment agencies and any person, labor
7 organization, or labor union having a hiring hall or hiring
8 office regularly undertaking, with or without compensation, to
9 procure opportunities to work, or to procure, recruit, refer
10 or place employees.

11 (D) Labor Organization. "Labor Organization" includes any
12 organization, labor union, craft union, or any voluntary
13 unincorporated association designed to further the cause of
14 the rights of union labor which is constituted for the
15 purpose, in whole or in part, of collective bargaining or of
16 dealing with employers concerning grievances, terms or
17 conditions of employment, or apprenticeships or applications
18 for apprenticeships, or of other mutual aid or protection in
19 connection with employment, including apprenticeships or
20 applications for apprenticeships.

21 (E) Sexual Harassment. "Sexual harassment" means any
22 unwelcome sexual advances or requests for sexual favors or any
23 conduct of a sexual nature when (1) submission to such conduct
24 is made either explicitly or implicitly a term or condition of
25 an individual's employment, (2) submission to or rejection of
26 such conduct by an individual is used as the basis for

1 employment decisions affecting such individual, or (3) such
2 conduct has the purpose or effect of substantially interfering
3 with an individual's work performance or creating an
4 intimidating, hostile or offensive working environment.

5 For purposes of this definition, the phrase "working
6 environment" is not limited to a physical location an employee
7 is assigned to perform his or her duties.

8 (E-1) Harassment. "Harassment" means any unwelcome conduct
9 on the basis of an individual's actual or perceived race,
10 color, religion, national origin, ancestry, age, sex, marital
11 status, order of protection status, disability, military
12 status, sexual orientation, pregnancy, unfavorable discharge
13 from military service, citizenship status, or work
14 authorization status that has the purpose or effect of
15 substantially interfering with the individual's work
16 performance or creating an intimidating, hostile, or offensive
17 working environment. For purposes of this definition, the
18 phrase "working environment" is not limited to a physical
19 location an employee is assigned to perform his or her duties.

20 (F) Religion. "Religion" with respect to employers
21 includes all aspects of religious observance and practice, as
22 well as belief, unless an employer demonstrates that he is
23 unable to reasonably accommodate an employee's or prospective
24 employee's religious observance or practice without undue
25 hardship on the conduct of the employer's business.

26 (G) Public Employer. "Public employer" means the State, an

1 agency or department thereof, unit of local government, school
2 district, instrumentality or political subdivision.

3 (H) Public Employee. "Public employee" means an employee
4 of the State, agency or department thereof, unit of local
5 government, school district, instrumentality or political
6 subdivision. "Public employee" does not include public
7 officers or employees of the General Assembly or agencies
8 thereof.

9 (I) Public Officer. "Public officer" means a person who is
10 elected to office pursuant to the Constitution or a statute or
11 ordinance, or who is appointed to an office which is
12 established, and the qualifications and duties of which are
13 prescribed, by the Constitution or a statute or ordinance, to
14 discharge a public duty for the State, agency or department
15 thereof, unit of local government, school district,
16 instrumentality or political subdivision.

17 (J) Eligible Bidder. "Eligible bidder" means a person who,
18 prior to contract award or prior to bid opening for State
19 contracts for construction or construction-related services,
20 has filed with the Department a properly completed, sworn and
21 currently valid employer report form, pursuant to the
22 Department's regulations. The provisions of this Article
23 relating to eligible bidders apply only to bids on contracts
24 with the State and its departments, agencies, boards, and
25 commissions, and the provisions do not apply to bids on
26 contracts with units of local government or school districts.

1 (K) Citizenship Status. "Citizenship status" means the
2 status of being:

3 (1) a born U.S. citizen;

4 (2) a naturalized U.S. citizen;

5 (3) a U.S. national; or

6 (4) a person born outside the United States and not a
7 U.S. citizen who is lawfully present and who is protected
8 from discrimination under the provisions of Section 1324b
9 of Title 8 of the United States Code, as now or hereafter
10 amended.

11 (L) Work Authorization Status. "Work authorization status"
12 means the status of being a person born outside of the United
13 States, and not a U.S. citizen, who is authorized by the
14 federal government to work in the United States.

15 (M) Predictive Data Analytics. "Predictive data analytics"
16 means the use of automated machine learning algorithms for the
17 purpose of statistically analyzing a person's behavior.

18 (Source: P.A. 101-221, eff. 1-1-20; 101-430, eff. 7-1-20;
19 102-233, eff. 8-2-21; 102-558, eff. 8-20-21; 102-1030, eff.
20 5-27-22.)

21 (775 ILCS 5/2-102) (from Ch. 68, par. 2-102)

22 Sec. 2-102. Civil rights violations - employment. It is a
23 civil rights violation:

24 (A) Employers. For any employer to refuse to hire, to
25 segregate, to engage in harassment as defined in

1 subsection (E-1) of Section 2-101, or to act with respect
2 to recruitment, hiring, promotion, renewal of employment,
3 selection for training or apprenticeship, discharge,
4 discipline, tenure or terms, privileges or conditions of
5 employment on the basis of unlawful discrimination,
6 citizenship status, or work authorization status. An
7 employer is responsible for harassment by the employer's
8 nonmanagerial and nonsupervisory employees only if the
9 employer becomes aware of the conduct and fails to take
10 reasonable corrective measures.

11 (A-5) Language. For an employer to impose a
12 restriction that has the effect of prohibiting a language
13 from being spoken by an employee in communications that
14 are unrelated to the employee's duties.

15 For the purposes of this subdivision (A-5), "language"
16 means a person's native tongue, such as Polish, Spanish,
17 or Chinese. "Language" does not include such things as
18 slang, jargon, profanity, or vulgarity.

19 (A-10) Harassment of nonemployees. For any employer,
20 employment agency, or labor organization to engage in
21 harassment of nonemployees in the workplace. An employer
22 is responsible for harassment of nonemployees by the
23 employer's nonmanagerial and nonsupervisory employees only
24 if the employer becomes aware of the conduct and fails to
25 take reasonable corrective measures. For the purposes of
26 this subdivision (A-10), "nonemployee" means a person who

1 is not otherwise an employee of the employer and is
2 directly performing services for the employer pursuant to
3 a contract with that employer. "Nonemployee" includes
4 contractors and consultants. This subdivision applies to
5 harassment occurring on or after the effective date of
6 this amendatory Act of the 101st General Assembly.

7 (B) Employment agency. For any employment agency to
8 fail or refuse to classify properly, accept applications
9 and register for employment referral or apprenticeship
10 referral, refer for employment, or refer for
11 apprenticeship on the basis of unlawful discrimination,
12 citizenship status, or work authorization status or to
13 accept from any person any job order, requisition or
14 request for referral of applicants for employment or
15 apprenticeship which makes or has the effect of making
16 unlawful discrimination or discrimination on the basis of
17 citizenship status or work authorization status a
18 condition of referral.

19 (C) Labor organization. For any labor organization to
20 limit, segregate or classify its membership, or to limit
21 employment opportunities, selection and training for
22 apprenticeship in any trade or craft, or otherwise to
23 take, or fail to take, any action which affects adversely
24 any person's status as an employee or as an applicant for
25 employment or as an apprentice, or as an applicant for
26 apprenticeships, or wages, tenure, hours of employment or

1 apprenticeship conditions on the basis of unlawful
2 discrimination, citizenship status, or work authorization
3 status.

4 (D) Sexual harassment. For any employer, employee,
5 agent of any employer, employment agency or labor
6 organization to engage in sexual harassment; provided,
7 that an employer shall be responsible for sexual
8 harassment of the employer's employees by nonemployees or
9 nonmanagerial and nonsupervisory employees only if the
10 employer becomes aware of the conduct and fails to take
11 reasonable corrective measures.

12 (D-5) Sexual harassment of nonemployees. For any
13 employer, employee, agent of any employer, employment
14 agency, or labor organization to engage in sexual
15 harassment of nonemployees in the workplace. An employer
16 is responsible for sexual harassment of nonemployees by
17 the employer's nonmanagerial and nonsupervisory employees
18 only if the employer becomes aware of the conduct and
19 fails to take reasonable corrective measures. For the
20 purposes of this subdivision (D-5), "nonemployee" means a
21 person who is not otherwise an employee of the employer
22 and is directly performing services for the employer
23 pursuant to a contract with that employer. "Nonemployee"
24 includes contractors and consultants. This subdivision
25 applies to sexual harassment occurring on or after the
26 effective date of this amendatory Act of the 101st General

1 Assembly.

2 (E) Public employers. For any public employer to
3 refuse to permit a public employee under its jurisdiction
4 who takes time off from work in order to practice his or
5 her religious beliefs to engage in work, during hours
6 other than such employee's regular working hours,
7 consistent with the operational needs of the employer and
8 in order to compensate for work time lost for such
9 religious reasons. Any employee who elects such deferred
10 work shall be compensated at the wage rate which he or she
11 would have earned during the originally scheduled work
12 period. The employer may require that an employee who
13 plans to take time off from work in order to practice his
14 or her religious beliefs provide the employer with a
15 notice of his or her intention to be absent from work not
16 exceeding 5 days prior to the date of absence.

17 (E-5) Religious discrimination. For any employer to
18 impose upon a person as a condition of obtaining or
19 retaining employment, including opportunities for
20 promotion, advancement, or transfer, any terms or
21 conditions that would require such person to violate or
22 forgo a sincerely held practice of his or her religion
23 including, but not limited to, the wearing of any attire,
24 clothing, or facial hair in accordance with the
25 requirements of his or her religion, unless, after
26 engaging in a bona fide effort, the employer demonstrates

1 that it is unable to reasonably accommodate the employee's
2 or prospective employee's sincerely held religious belief,
3 practice, or observance without undue hardship on the
4 conduct of the employer's business.

5 Nothing in this Section prohibits an employer from
6 enacting a dress code or grooming policy that may include
7 restrictions on attire, clothing, or facial hair to
8 maintain workplace safety or food sanitation.

9 (F) Training and apprenticeship programs. For any
10 employer, employment agency or labor organization to
11 discriminate against a person on the basis of age in the
12 selection, referral for or conduct of apprenticeship or
13 training programs.

14 (G) Immigration-related practices.

15 (1) for an employer to request for purposes of
16 satisfying the requirements of Section 1324a(b) of
17 Title 8 of the United States Code, as now or hereafter
18 amended, more or different documents than are required
19 under such Section or to refuse to honor documents
20 tendered that on their face reasonably appear to be
21 genuine or to refuse to honor work authorization based
22 upon the specific status or term of status that
23 accompanies the authorization to work; or

24 (2) for an employer participating in the E-Verify
25 Program, as authorized by 8 U.S.C. 1324a, Notes, Pilot
26 Programs for Employment Eligibility Confirmation

1 (enacted by PL 104-208, div. C title IV, subtitle A) to
2 refuse to hire, to segregate, or to act with respect to
3 recruitment, hiring, promotion, renewal of employment,
4 selection for training or apprenticeship, discharge,
5 discipline, tenure or terms, privileges or conditions
6 of employment without following the procedures under
7 the E-Verify Program.

8 (H) (Blank).

9 (I) Pregnancy. For an employer to refuse to hire, to
10 segregate, or to act with respect to recruitment, hiring,
11 promotion, renewal of employment, selection for training
12 or apprenticeship, discharge, discipline, tenure or terms,
13 privileges or conditions of employment on the basis of
14 pregnancy, childbirth, or medical or common conditions
15 related to pregnancy or childbirth. Women affected by
16 pregnancy, childbirth, or medical or common conditions
17 related to pregnancy or childbirth shall be treated the
18 same for all employment-related purposes, including
19 receipt of benefits under fringe benefit programs, as
20 other persons not so affected but similar in their ability
21 or inability to work, regardless of the source of the
22 inability to work or employment classification or status.

23 (J) Pregnancy; reasonable accommodations.

24 (1) If after a job applicant or employee,
25 including a part-time, full-time, or probationary
26 employee, requests a reasonable accommodation, for an

1 employer to not make reasonable accommodations for any
2 medical or common condition of a job applicant or
3 employee related to pregnancy or childbirth, unless
4 the employer can demonstrate that the accommodation
5 would impose an undue hardship on the ordinary
6 operation of the business of the employer. The
7 employer may request documentation from the employee's
8 health care provider concerning the need for the
9 requested reasonable accommodation or accommodations
10 to the same extent documentation is requested for
11 conditions related to disability if the employer's
12 request for documentation is job-related and
13 consistent with business necessity. The employer may
14 require only the medical justification for the
15 requested accommodation or accommodations, a
16 description of the reasonable accommodation or
17 accommodations medically advisable, the date the
18 reasonable accommodation or accommodations became
19 medically advisable, and the probable duration of the
20 reasonable accommodation or accommodations. It is the
21 duty of the individual seeking a reasonable
22 accommodation or accommodations to submit to the
23 employer any documentation that is requested in
24 accordance with this paragraph. Notwithstanding the
25 provisions of this paragraph, the employer may require
26 documentation by the employee's health care provider

1 to determine compliance with other laws. The employee
2 and employer shall engage in a timely, good faith, and
3 meaningful exchange to determine effective reasonable
4 accommodations.

5 (2) For an employer to deny employment
6 opportunities or benefits to or take adverse action
7 against an otherwise qualified job applicant or
8 employee, including a part-time, full-time, or
9 probationary employee, if the denial or adverse action
10 is based on the need of the employer to make reasonable
11 accommodations to the known medical or common
12 conditions related to the pregnancy or childbirth of
13 the applicant or employee.

14 (3) For an employer to require a job applicant or
15 employee, including a part-time, full-time, or
16 probationary employee, affected by pregnancy,
17 childbirth, or medical or common conditions related to
18 pregnancy or childbirth to accept an accommodation
19 when the applicant or employee did not request an
20 accommodation and the applicant or employee chooses
21 not to accept the employer's accommodation.

22 (4) For an employer to require an employee,
23 including a part-time, full-time, or probationary
24 employee, to take leave under any leave law or policy
25 of the employer if another reasonable accommodation
26 can be provided to the known medical or common

1 conditions related to the pregnancy or childbirth of
2 an employee. No employer shall fail or refuse to
3 reinstate the employee affected by pregnancy,
4 childbirth, or medical or common conditions related to
5 pregnancy or childbirth to her original job or to an
6 equivalent position with equivalent pay and
7 accumulated seniority, retirement, fringe benefits,
8 and other applicable service credits upon her
9 signifying her intent to return or when her need for
10 reasonable accommodation ceases, unless the employer
11 can demonstrate that the accommodation would impose an
12 undue hardship on the ordinary operation of the
13 business of the employer.

14 For the purposes of this subdivision (J), "reasonable
15 accommodations" means reasonable modifications or
16 adjustments to the job application process or work
17 environment, or to the manner or circumstances under which
18 the position desired or held is customarily performed,
19 that enable an applicant or employee affected by
20 pregnancy, childbirth, or medical or common conditions
21 related to pregnancy or childbirth to be considered for
22 the position the applicant desires or to perform the
23 essential functions of that position, and may include, but
24 is not limited to: more frequent or longer bathroom
25 breaks, breaks for increased water intake, and breaks for
26 periodic rest; private non-bathroom space for expressing

1 breast milk and breastfeeding; seating; assistance with
2 manual labor; light duty; temporary transfer to a less
3 strenuous or hazardous position; the provision of an
4 accessible worksite; acquisition or modification of
5 equipment; job restructuring; a part-time or modified work
6 schedule; appropriate adjustment or modifications of
7 examinations, training materials, or policies;
8 reassignment to a vacant position; time off to recover
9 from conditions related to childbirth; and leave
10 necessitated by pregnancy, childbirth, or medical or
11 common conditions resulting from pregnancy or childbirth.

12 For the purposes of this subdivision (J), "undue
13 hardship" means an action that is prohibitively expensive
14 or disruptive when considered in light of the following
15 factors: (i) the nature and cost of the accommodation
16 needed; (ii) the overall financial resources of the
17 facility or facilities involved in the provision of the
18 reasonable accommodation, the number of persons employed
19 at the facility, the effect on expenses and resources, or
20 the impact otherwise of the accommodation upon the
21 operation of the facility; (iii) the overall financial
22 resources of the employer, the overall size of the
23 business of the employer with respect to the number of its
24 employees, and the number, type, and location of its
25 facilities; and (iv) the type of operation or operations
26 of the employer, including the composition, structure, and

1 functions of the workforce of the employer, the geographic
2 separateness, administrative, or fiscal relationship of
3 the facility or facilities in question to the employer.
4 The employer has the burden of proving undue hardship. The
5 fact that the employer provides or would be required to
6 provide a similar accommodation to similarly situated
7 employees creates a rebuttable presumption that the
8 accommodation does not impose an undue hardship on the
9 employer.

10 No employer is required by this subdivision (J) to
11 create additional employment that the employer would not
12 otherwise have created, unless the employer does so or
13 would do so for other classes of employees who need
14 accommodation. The employer is not required to discharge
15 any employee, transfer any employee with more seniority,
16 or promote any employee who is not qualified to perform
17 the job, unless the employer does so or would do so to
18 accommodate other classes of employees who need it.

19 (K) Notice.

20 (1) For an employer to fail to post or keep posted
21 in a conspicuous location on the premises of the
22 employer where notices to employees are customarily
23 posted, or fail to include in any employee handbook
24 information concerning an employee's rights under this
25 Article, a notice, to be prepared or approved by the
26 Department, summarizing the requirements of this

1 Article and information pertaining to the filing of a
2 charge, including the right to be free from unlawful
3 discrimination, the right to be free from sexual
4 harassment, and the right to certain reasonable
5 accommodations. The Department shall make the
6 documents required under this paragraph available for
7 retrieval from the Department's website.

8 (2) Upon notification of a violation of paragraph
9 (1) of this subdivision (K), the Department may launch
10 a preliminary investigation. If the Department finds a
11 violation, the Department may issue a notice to show
12 cause giving the employer 30 days to correct the
13 violation. If the violation is not corrected, the
14 Department may initiate a charge of a civil rights
15 violation.

16 (L) Predictive Data Analytics.

17 (1) An employer that uses predictive data
18 analytics in its employment decisions may not consider
19 the applicant's race or zip code when used as a proxy
20 for race to reject an applicant in the context of
21 recruiting, hiring, promotion, renewal of employment,
22 selection for training or apprenticeship, discharge,
23 discipline, tenure or terms, privileges, or conditions
24 of employment.

25 (2) Nothing in this Act shall be construed to
26 prevent the use of predictive data analytics to

1 support the inclusion of diverse candidates in making
2 employment decisions.

3 (Source: P.A. 101-221, eff. 1-1-20; 102-233, eff. 8-2-21.)

4 Section 10. The Consumer Fraud and Deceptive Business
5 Practices Act is amended by adding Section 2BBBB as follows:

6 (815 ILCS 505/2BBBB new)

7 Sec. 2BBBB. Creditworthiness; use of predictive analytics.

8 (a) In this Section, "predictive data analytics" means the
9 use of automated machine learning algorithms for the purpose
10 of statistically analyzing a person's behavior.

11 (b) A person or entity that relies either partially or
12 fully on predictive data analytics to determine a consumer's
13 creditworthiness may not allow the use of information about
14 the consumer that assigns specific risk factors to the
15 consumer's race or zip code resulting in rejection of credit
16 or other adverse credit-related action to a consumer.

17 (c) A person or entity that uses predictive data analytics
18 to determine the creditworthiness of more than 50 consumers in
19 a calendar year who are State residents shall, within 90 days
20 after the effective date of this amendatory Act of the 103rd
21 General Assembly, devise procedures to ensure that it does not
22 consider information that assigns specific risk factors to a
23 consumer's race or zip code when rejecting or taking other
24 adverse action on a consumer's application for credit.

1 (d) A person or entity that violates this Section commits
2 an unlawful practice within the meaning of this Act.