



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**SB1632**

Introduced 2/23/2005, 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, 2006.

LRB094 10055 WGH 40313 b

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.

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

29 (5) Merit and Retirement Systems.

30 (a) Applying different standards of compensation,  
31 or different terms, conditions or privileges of  
32 employment pursuant to a merit or retirement system

1 provided that such system or its administration is not  
2 used as a subterfuge for or does not have the effect of  
3 unlawful discrimination.

4 (b) Effecting compulsory retirement of any  
5 employee who has attained 65 years of age and who, for  
6 the 2-year period immediately preceding retirement, is  
7 employed in a bona fide executive or a high  
8 policymaking position, if such employee is entitled to  
9 an immediate nonforfeitable annual retirement benefit  
10 from a pension, profit-sharing, savings, or deferred  
11 compensation plan, or any combination of such plans of  
12 the employer of such employee, which equals, in the  
13 aggregate, at least \$44,000. If any such retirement  
14 benefit is in a form other than a straight life annuity  
15 (with no ancillary benefits) or if the employees  
16 contribute to any such plan or make rollover  
17 contributions, the retirement benefit shall be  
18 adjusted in accordance with regulations prescribed by  
19 the Department, so that the benefit is the equivalent  
20 of a straight life annuity (with no ancillary benefits)  
21 under a plan to which employees do not contribute and  
22 under which no rollover contributions are made.

23 (c) Until January 1, 1994, effecting compulsory  
24 retirement of any employee who has attained 70 years of  
25 age, and who is serving under a contract of unlimited  
26 tenure (or similar arrangement providing for unlimited  
27 tenure) at an institution of higher education as  
28 defined by Section 1201(a) of the Higher Education Act  
29 of 1965.

30 (6) Training and Apprenticeship programs. Establishing  
31 an educational requirement as a prerequisite to selection  
32 for a training or apprenticeship program, provided such  
33 requirement does not operate to discriminate on the basis  
34 of any prohibited classification except age.

35 (7) Police and Firefighter/Paramedic Retirement.  
36 Imposing a mandatory retirement age for

1 firefighters/paramedics or law enforcement officers and  
2 discharging or retiring such individuals pursuant to the  
3 mandatory retirement age if such action is taken pursuant  
4 to a bona fide retirement plan provided that the law  
5 enforcement officer or firefighter/paramedic has attained:

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

8 (b) if the applicable State or local law was  
9 enacted after the date of enactment of the federal Age  
10 Discrimination in Employment Act Amendments of 1996  
11 (P.L. 104-208), the age of retirement in effect on the  
12 date of such discharge under such law.

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

17 (8) Police and Firefighter/Paramedic Appointment.  
18 Failing or refusing to hire any individual because of such  
19 individual's age if such action is taken with respect to  
20 the employment of an individual as a firefighter/paramedic  
21 or as a law enforcement officer and the individual has  
22 attained:

23 (a) the age of hiring or appointment in effect  
24 under applicable State or local law on March 3, 1983;  
25 or

26 (b) the age of hiring in effect on the date of such  
27 failure or refusal to hire under applicable State or  
28 local law enacted after the date of enactment of the  
29 federal Age Discrimination in Employment Act  
30 Amendments of 1996 (P.L. 104-208).

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

32 "Firefighter/paramedic" means an employee, the duties  
33 of whose position are primarily to perform work directly  
34 connected with the control and extinguishment of fires or  
35 the maintenance and use of firefighting apparatus and  
36 equipment, or to provide emergency medical services,

1 including an employee engaged in this activity who is  
2 transferred to a supervisory or administrative position.

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

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

12

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

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

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

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

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

23 such amendatory Act of 1987 shall not apply until the  
24 termination of such collective bargaining agreement or January  
25 1, 1990, whichever occurs first.

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

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

32 (a) has successfully completed a supervised drug  
33 rehabilitation program and is no longer engaging in the  
34 illegal use of drugs, or has otherwise been rehabilitated  
35 successfully and is no longer engaging in such use;

36 (b) is participating in a supervised rehabilitation

1 program and is no longer engaging in such use; or

2 (c) is erroneously regarded as engaging in such use,  
3 but is not engaging in such use.

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

9 (3) An employer:

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

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

15 (c) may require that employees behave in conformance  
16 with the requirements established under the federal  
17 Drug-Free Workplace Act of 1988 (11 U.S.C. 701 et seq.) and  
18 the Drug Free Workplace Act;

19 (d) may hold an employee who engages in the illegal use  
20 of drugs or who is an alcoholic to the same qualification  
21 standards for employment or job performance and behavior  
22 that such employer holds other employees, even if any  
23 unsatisfactory performance or behavior is related to the  
24 drug use or alcoholism of such employee; and

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

27 (i) employees comply with the standards  
28 established in such regulations of the United States  
29 Department of Defense, if the employees of the employer  
30 are employed in an industry subject to such  
31 regulations, including complying with regulations (if  
32 any) that apply to employment in sensitive positions in  
33 such an industry, in the case of employees of the  
34 employer who are employed in such positions (as defined  
35 in the regulations of the Department of Defense);

36 (ii) employees comply with the standards

1 established in such regulations of the Nuclear  
2 Regulatory Commission, if the employees of the  
3 employer are employed in an industry subject to such  
4 regulations, including complying with regulations (if  
5 any) that apply to employment in sensitive positions in  
6 such an industry, in the case of employees of the  
7 employer who are employed in such positions (as defined  
8 in the regulations of the Nuclear Regulatory  
9 Commission); and

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

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

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

31 (a) test employees of such employer in, and applicants  
32 for, positions involving safety-sensitive duties for the  
33 illegal use of drugs and for on-duty impairment by alcohol;  
34 and

35 (b) remove such persons who test positive for illegal  
36 use of drugs and on-duty impairment by alcohol pursuant to

1           subparagraph (a) from safety-sensitive duties in  
2           implementing paragraph (3).

3           (D) The provisions of this Act do not apply to a religious  
4           organization, association, or society or any nonprofit  
5           institution or organization operated, supervised, or  
6           controlled by or in conjunction with a religious organization,  
7           association, or society with respect to employment  
8           qualifications based on religion or sexual orientation.

9           (Source: P.A. 90-481, eff. 8-17-97.)

10           Section 99. Effective date. This Act takes effect January  
11           1, 2006.