

2012 -- S 2587

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - FAIR EMPLOYMENT PRACTICES -
CREDIT REPORTS

Introduced By: Senators Pichardo, DiPalma, Sheehan, Lynch, and Lombardo

Date Introduced: February 28, 2012

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-5-7 of the General Laws in Chapter 28-5 entitled "Fair
2 Employment Practices" is hereby amended to read as follows:

3 **28-5-7. Unlawful employment practices.** -- It shall be an unlawful employment
4 practice:

5 (1) For any employer:

6 (i) To refuse to hire any applicant for employment because of his or her race or color,
7 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
8 ancestral origin;

9 (ii) Because of those reasons, to discharge an employee or discriminate against him or
10 her with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or
11 any other matter directly or indirectly related to employment. However, if an insurer or employer
12 extends insurance related benefits to persons other than or in addition to the named employee,
13 nothing in this subdivision shall require those benefits to be offered to unmarried partners of
14 named employees;

15 (iii) In the recruiting of individuals for employment or in hiring them, to utilize any
16 employment agency, placement service, training school or center, labor organization, or any other
17 employee referring source which the employer knows, or has reasonable cause to know,
18 discriminates against individuals because of their race or color, religion, sex, sexual orientation,

1 gender identity or expression, disability, age, or country of ancestral origin;

2 (iv) To refuse to reasonably accommodate an employee's or prospective employee's
3 disability unless the employer can demonstrate that the accommodation would pose a hardship on
4 the employer's program, enterprise, or business; or

5 (v) When an employee has presented to the employer an internal complaint alleging
6 harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual
7 orientation, gender identity or expression, or country of ancestral origin, to refuse to disclose in a
8 timely manner in writing to that employee the disposition of the complaint, including a
9 description of any action taken in resolution of the complaint; provided, however, no other
10 personnel information shall be disclosed to the complainant.

11 (vi) An employer shall prior to requesting a consumer credit report for employment
12 purposes, provide written notice to the person involved. The notice shall inform the person that a
13 report will be used, and shall identify the specific basis for use of the report. The notice shall also
14 inform the person of the source of the report, and shall contain a box that the person may check
15 off to receive a copy of the credit report. If the consumer indicates that he or she wishes to receive
16 a copy of the report, the user shall request that a copy be provided to the person when the user
17 requests its copy from the credit reporting agency. The report to the user and to the subject person
18 shall be provided contemporaneously and at no charge to the subject person. Whenever
19 employment involving a consumer is denied either wholly or partly because of information
20 contained in a consumer credit report from a consumer credit reporting agency, the user of the
21 consumer credit report shall so advise the consumer against whom the adverse action has been
22 taken and supply the name and address or addresses of the consumer credit reporting agency
23 making the report. No person shall be held liable for any violation of this section if he or she
24 shows by a preponderance of the evidence that, at the time of the alleged violation, he or she
25 maintained reasonable procedures to assure compliance with this section.

26 (vii) An employer or prospective employer shall not sue a consumer credit report for
27 employment purposes unless the position of the person for whom the report is sought is any of the
28 following:

29 (A) a managerial position.

30 (B) A position in the state department of justice.

31 (C) That of a sworn peace officer or other law enforcement position.

32 (D) A position for which the information contained in the report is required by law to be
33 disclosed or obtained.

34 (E) A position that involves regular access, for any purpose other than the routine

1 solicitation and processing of credit card applications in a retail establishment, to all of the
2 following types of information of any one person:

3 (I) Bank or credit card account information;

4 (II) Social security number;

5 (III) Date of birth;

6 (F) A position in which the person is, or would be, any of the following:

7 (I) A named signatory on the bank or credit card account of the employer;

8 (II) Authorized to transfer money on behalf of the employer; or

9 (III) Authorized to enter into financial contracts on behalf of the employer.

10 (G) A position that involves access to confidential or proprietary information, including a
11 formula, pattern, compilation, program, device, method, technique, process or trade secret that
12 derives independent economic value, actual or potential, from not being generally known to, and
13 not being readily ascertainable by proper means by other persons who may obtain economic value
14 from the disclosure or use of the information, and is the subject of an effort that is reasonable
15 under the circumstances to maintain secrecy of the information.

16 (H) A position that involves regular access to cash totaling ten thousand dollars (\$10,000)
17 or more of the employer, a customer, or client, during the workday.

18 This section does not apply to a person or business subject to sections 6801 to 6809,
19 inclusive, of title 15 of the United States code and state and federal statutes or regulations
20 implementing those sections if the person or business is subject to compliance oversight by a state
21 or federal regulatory agency with respect to those laws.

22 (2) (i) For any employment agency to fail or refuse to properly classify or refer for
23 employment or otherwise discriminate against any individual because of his or her race or color,
24 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
25 ancestral origin; or

26 (ii) For any employment agency, placement service, training school or center, labor
27 organization, or any other employee referring source to comply with an employer's request for the
28 referral of job applicants if the request indicates either directly or indirectly that the employer will
29 not afford full and equal employment opportunities to individuals regardless of their race or color,
30 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
31 ancestral origin;

32 (3) For any labor organization:

33 (i) To deny full and equal membership rights to any applicant for membership because of
34 his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability,

1 age, or country of ancestral origin;

2 (ii) Because of those reasons, to deny a member full and equal membership rights, expel
3 him or her from membership, or otherwise discriminate in any manner against him or her with
4 respect to his or her hire, tenure, compensation, terms, conditions or privileges of employment, or
5 any other matter directly or indirectly related to membership or employment, whether or not
6 authorized or required by the constitution or bylaws of the labor organization or by a collective
7 labor agreement or other contract;

8 (iii) To fail or refuse to classify properly or refer for employment, or otherwise to
9 discriminate against any member because of his or her race or color, religion, sex, sexual
10 orientation, gender identity or expression, disability, age, or country of ancestral origin; or

11 (iv) To refuse to reasonably accommodate a member's or prospective member's disability
12 unless the labor organization can demonstrate that the accommodation would pose a hardship on
13 the labor organization's program, enterprise, or business;

14 (4) Except where based on a bona fide occupational qualification certified by the
15 commission or where necessary to comply with any federal mandated affirmative action
16 programs, for any employer or employment agency, labor organization, placement service,
17 training school or center, or any other employee referring source, prior to employment or
18 admission to membership of any individual, to:

19 (i) Elicit or attempt to elicit any information directly or indirectly pertaining to his or her
20 race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or
21 country of ancestral origin;

22 (ii) Make or keep a record of his or her race or color, religion, sex, sexual orientation,
23 gender identity or expression, disability, age, or country of ancestral origin;

24 (iii) Use any form of application for employment, or personnel or membership blank
25 containing questions or entries directly or indirectly pertaining to race or color, religion, sex,
26 sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;

27 (iv) Print or publish or cause to be printed or published any notice or advertisement
28 relating to employment or membership indicating any preference, limitation, specification, or
29 discrimination based upon race or color, religion, sex, sexual orientation, gender identity or
30 expression, disability, age, or country of ancestral origin; or

31 (v) Establish, announce, or follow a policy of denying or limiting, through a quota
32 system or otherwise, employment or membership opportunities of any group because of the race
33 or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country
34 of ancestral origin of that group;

1 (5) For any employer or employment agency, labor organization, placement service,
2 training school or center, or any other employee referring source to discriminate in any manner
3 against any individual because he or she has opposed any practice forbidden by this chapter, or
4 because he or she has made a charge, testified, or assisted in any manner in any investigation,
5 proceeding, or hearing under this chapter;

6 (6) For any person, whether or not an employer, employment agency, labor organization,
7 or employee, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to
8 be an unlawful employment practice, or to obstruct or prevent any person from complying with
9 the provisions of this chapter or any order issued pursuant to this chapter, or to attempt directly or
10 indirectly to commit any act declared by this section to be an unlawful employment practice;

11 (7) For any employer to include on any application for employment, except applications
12 for law enforcement agency positions or positions related to law enforcement agencies, a question
13 inquiring or to otherwise inquire either orally or in writing whether the applicant has ever been
14 arrested or charged with any crime; provided, that nothing in this subdivision shall prevent an
15 employer from inquiring whether the applicant has ever been convicted of any crime;

16 (8) (i) For any person who, on June 7, 1988, is providing either by direct payment or by
17 making contributions to a fringe benefit fund or insurance program, benefits in violation with
18 sections 28-5-6, 28-5-7 and 28-5-38, until the expiration of a period of one year from June 7,
19 1988 or if there is an applicable collective bargaining agreement in effect on June 7, 1988, until
20 the termination of that agreement, in order to come into compliance with sections 28-5-6, 28-5-7
21 and 28-5-38, to reduce the benefits or the compensation provided any employee on June 7, 1988,
22 either directly or by failing to provide sufficient contributions to a fringe benefit fund or
23 insurance program.

24 (ii) Where the costs of these benefits on June 7, 1988 are apportioned between employers
25 and employees, the payments or contributions required to comply with sections 28-5-6, 28-5-7
26 and 28-5-38 may be made by employers and employees in the same proportion.

27 (iii) Nothing in this section shall prevent the readjustment of benefits or compensation
28 for reasons unrelated to compliance with sections 28-5-6, 28-5-7 and 28-5-38.

29 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO LABOR AND LABOR RELATIONS - FAIR EMPLOYMENT PRACTICES -
CREDIT REPORTS

- 1 This act would regulate the use of credit reports by prospective employers for hiring
- 2 purposes.
- 3 This act would take effect upon passage.

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