

2021 -- H 6215

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO PROPERTY -- RHODE ISLAND FAIR HOUSING PRACTICES ACT

Introduced By: Representatives Ajello, Handy, Ruggiero, Speakman, Donovan, Tanzi,
Kislak, Cassar, Kazarian, and Amore

Date Introduced: April 08, 2021

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 34-37-3 and 34-37-5 of the General Laws in Chapter 34-37 entitled
2 "Rhode Island Fair Housing Practices Act" are hereby amended to read as follows:

3 **34-37-3. Definitions.**

4 When used in this chapter:

5 (1) "Age" means anyone over the age of eighteen (18).

6 (2) "Armed forces" means the Army, Navy, Marine Corps, Coast Guard, Merchant
7 Marines, or Air Force of the United States and the Rhode Island National Guard.

8 (3) "Commission" means the Rhode Island commission for human rights created by § 28-
9 5-8.

10 (4) "Disability" means a disability as defined in § 42-87-1.

11 Provided, further, that the term "disability" does not include current, illegal use of, or
12 addiction to, a controlled substance, as defined in 21 U.S.C. § 802.

13 (5) "Discriminate" includes segregate, separate, or otherwise differentiate between or
14 among individuals because of race, color, religion, sex, sexual orientation, gender identity or
15 expression, marital status, military status as a veteran with an honorable discharge or an honorable
16 or general administrative discharge, servicemember in the armed forces, country of ancestral origin,
17 disability, age, housing status, or familial status or because of the race, color, religion, sex, sexual
18 orientation, gender identity or expression, marital status, military status as a veteran with an
19 honorable discharge or an honorable or general administrative discharge, servicemember in the

1 armed forces, country of ancestral origin, disability, age, housing status, or familial status of any
2 person with whom they are, or may wish to be, associated.

3 (6) The term "domestic abuse" for the purposes of this chapter shall have the same meaning
4 as that set forth in § 15-15-1 and include all forms of domestic violence as set forth in § 12-29-2,
5 except that the domestic abuse need not involve a minor or parties with minor children.

6 (7)(i) "Familial status" means one or more individuals who have not attained the age of
7 eighteen (18) years being domiciled with:

8 (A) A parent or another person having legal custody of the individual or individuals; or

9 (B) The designee of the parent or other person having the custody, with the written
10 permission of the parent or other person, provided that, if the individual is not a relative or legal
11 dependent of the designee, that the individual shall have been domiciled with the designee for at
12 least six (6) months.

13 (ii) The protections afforded against discrimination on the basis of familial status shall
14 apply to any person who is pregnant or is in the process of securing legal custody of any individual
15 who has not attained the age of eighteen (18) years.

16 (8) The terms, as used regarding persons with disabilities, "auxiliary aids and services",
17 "reasonable accommodation", and "reasonable modifications" have the same meaning as those
18 terms are defined in § 42-87-1.1.

19 (9) The term "gender identity or expression" includes a person's actual or perceived gender,
20 as well as a person's gender identity, gender-related self image, gender-related appearance, or
21 gender-related expression; whether or not that gender identity, gender-related self image, gender-
22 related appearance, or gender-related expression is different from that traditionally associated with
23 the person's sex at birth.

24 (10) "Housing accommodation" includes any building or structure, or portion of any
25 building or structure, or any parcel of land, developed or undeveloped, that is occupied or is
26 intended, designed, or arranged to be occupied, or to be developed for occupancy, as the home or
27 residence of one or more persons.

28 (11) "Otherwise qualified" includes any person with a disability who, with respect to the
29 rental of property, personally or with assistance arranged by the person with a disability, is capable
30 of performing all the responsibilities of a tenant as contained in § 34-18-24.

31 (12) "Owner" includes any person having the right to sell, rent, lease, or manage a housing
32 accommodation.

33 (13) "Person" includes one or more individuals, partnerships, associations, organizations,
34 corporations, labor organizations, mutual companies, joint stock companies, trusts, receivers, legal

1 representatives, trustees, other fiduciaries, or real estate brokers or real estate salespersons as
2 defined in chapter 20.5 of title 5.

3 (14) "Senior citizen" means a person sixty-two (62) years of age or older.

4 (15) The term "sexual orientation" means having, or being perceived as having, an
5 orientation for heterosexuality, bisexuality, or homosexuality. ~~This definition is intended to
6 describe the status of persons and does not render lawful any conduct prohibited by the criminal
7 laws of this state nor impose any duty on a religious organization. This definition does not confer
8 legislative approval of said status, but is intended to ensure the basic human rights of persons to
9 hold and convey property and to give and obtain credit, regardless of such status.~~

10 (16) The term "victim" means a family or household member and all other persons
11 contained within the definition of those terms as defined in § 12-29-2.

12 (17) The term "housing status" means the status of having or not having a fixed or regular
13 residence, including the status of living on the streets or in a homeless shelter or similar temporary
14 residence.

15 **34-37-5. Prevention of unlawful housing practices.**

16 (a) The commission is empowered and directed to prevent any person from violating any
17 of the provisions of this chapter, provided that before instituting a formal proceeding it shall attempt
18 by informal methods of conference, persuasion, and conciliation to induce compliance with this
19 chapter.

20 (b) Upon the commission's own initiative or whenever an aggrieved individual or an
21 organization chartered for the purpose of or engaged in combating discrimination or racism or of
22 safeguarding civil liberties, that organization acting on behalf of one or more individuals being
23 hereinafter referred to as the complainant, makes a charge, in writing, under oath, to the commission
24 that any person, agency, bureau, corporation, or association, hereinafter referred to as the
25 respondent, has violated or is violating, to the best of complainant's knowledge and belief, any of
26 the provisions of this chapter, and that the alleged discriminatory housing practice has occurred or
27 terminated within one year of the date of filing, the commission may initiate a preliminary
28 investigation and if it shall determine after the investigation that it is probable that unlawful housing
29 practices have been or are being engaged in, it shall endeavor to eliminate the unlawful housing
30 practices by informal methods of conference, conciliation, and persuasion. Nothing said or done
31 during these endeavors may be used as evidence in any subsequent proceeding. If after the
32 investigation and conference, the commission is satisfied that any unlawful housing practice of the
33 respondent will be eliminated, it may, with the consent of the complainant, treat the charge as
34 conciliated, and entry of that disposition shall be made on the records of the commission. If the

1 commission fails to effect the elimination of the unlawful housing practices and to obtain voluntary
2 compliance with this chapter, or, if the circumstances warrant, in advance of any preliminary
3 investigation or endeavors, the commission shall have the power to issue and cause to be served
4 upon any person or respondent a complaint stating the charges in that respect and containing a
5 notice of hearing before the commission, a member thereof, or a hearing examiner at a place therein
6 fixed to be held not less than ten (10) days after the service of the complaint.

7 (c) The commission, member thereof, or hearing examiner conducting the hearing shall
8 have the power reasonably and fairly to amend any written complaint at any time prior to the
9 issuance of an order based thereon. The respondents shall have like power to amend its answer to
10 the original or amended complaint at any time prior to the issuance of the order. The commissioner
11 assigned to the preliminary hearing of any charge shall take no part in the final hearing except as a
12 witness upon competent matters and will have no part in the determination or decision of the case
13 after hearing.

14 (d) The respondent shall have the right to file an answer to the complaint and shall appear
15 at the hearing in person or otherwise with or without counsel to present evidence and to examine
16 and cross-examine witnesses.

17 (e) In any proceeding the commission, its member, or its agent shall not be bound by the
18 rules of evidence prevailing in the courts.

19 (f) The commission shall in ascertaining the practices followed by the respondent take into
20 account all evidence, statistical or otherwise, which may tend to prove the existence of a
21 predetermined pattern of discrimination in housing.

22 (g) The testimony taken at the hearing shall be under oath and shall be reduced to writing
23 and filed with the commission. Thereafter, in its discretion, the commission upon notice may take
24 further testimony or hear argument.

25 (h)(1) If upon all the testimony taken the commission shall determine that the respondent
26 has engaged in or is engaging in unlawful housing practices, the commission shall state its findings
27 of fact and shall issue and cause to be served on the respondent an order requiring the respondent
28 to cease and desist from the unlawful housing practices, and to take such further affirmative or
29 other action as will effectuate the purposes of this chapter.

30 (2) The commission may also order the respondent to pay the complainant damages
31 sustained thereby; costs, including reasonable attorney's fees incurred at any time in connection
32 with the commission of the unlawful act, and civil penalties, any amounts awarded to be deposited
33 in the state treasury. The civil penalty shall be (i) an amount not exceeding ten thousand dollars
34 (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory

1 housing practice; (ii) in an amount not exceeding twenty-five thousand dollars (\$25,000) if the
2 respondent has been adjudged to have committed one other discriminatory housing practice during
3 the five (5) year period ending on the date of filing this charge; and (iii) in an amount not exceeding
4 fifty thousand dollars (\$50,000) if the respondent has been adjudged to have committed two (2) or
5 more discriminatory housing practices during the seven (7) year period ending on the date of the
6 filing of this charge; except that if the acts constituting the discriminatory housing practice that is
7 the object of the charge are committed by the same natural person who has been previously
8 adjudged to have committed acts constituting a discriminatory housing practice, then the civil
9 penalties set forth in (ii) and (iii) may be imposed without regard to the period of time within which
10 any subsequent discriminatory housing practice occurred. When determining the amount of civil
11 penalties, the commission shall consider as a mitigating factor whether the respondent has acted in
12 good faith and whether the respondent has actively engaged in regular antidiscrimination
13 educational programs. Provided that no order shall affect any contract, sale, encumbrance, or lease
14 consummated before the issuance of the order and involving a bona fide purchaser, encumbrancer
15 or tenant without actual notice of the charge filed under this title.

16 (i) If the commission shall find that no probable cause exists for crediting the charges, or,
17 if upon all the evidence, it shall find that a respondent has not engaged in unfair housing practices,
18 the commission shall state its findings of fact and shall issue and cause to be served on the
19 complainant an order dismissing the complaint as to the respondent. A copy of the order shall be
20 delivered in all cases to the attorney general and such other public officers as the commission deems
21 proper.

22 (j) Until a transcript of the record in a case shall be filed in a court as provided in subsection
23 (m), the commission may at any time, upon reasonable notice, and in such manner as it shall deem
24 proper, modify or set aside, in whole or in part, any of its findings or orders.

25 (k) Until such time as a hearing is convened pursuant to this section, no publicity shall be
26 given to any proceedings before the commission, either by the commission or any employee
27 thereof, the complainant, or the respondent, except that in the event of a conciliation agreement the
28 agreement shall be made public unless the complainant and respondent otherwise agree and the
29 commission determines that disclosure is not required to further the purposes of this chapter. After
30 the complaint issues and before an order issues, the commission shall not initiate any public notice
31 of any charge or complaint before the commission, however, the commission may respond to
32 inquiries about the status of a complaint.

33 (l) A complainant may seek a right to sue in state court if not less than one hundred and
34 twenty (120) days and not more than two (2) years have elapsed from the date of filing of a charge,

1 if the commission has been unable to secure a settlement agreement or conciliation agreement and
2 if the commission has not commenced hearing on a complaint. The commission shall grant the right
3 to sue within thirty (30) days after receipt of the request. This shall terminate all proceedings before
4 the commission and shall give to the complainant the right to commence suit in the superior court
5 within any county as provided in § 28-5-28 within ninety (90) days after the granting of the request.
6 Any party may claim a trial by jury. The superior court may make orders consistent with subsection
7 (h) and may also award punitive damages and such other damages as the court deems just and
8 proper.

9 (m)(1) The commission is further empowered to file a complaint in the superior court in
10 any county in which the unlawful housing practice allegedly occurs, or has occurred, or in which a
11 defendant resides or maintains a business office, or in Providence County, seeking injunctive relief,
12 including a temporary restraining order, against the defendant.

13 (2) No preliminary injunction shall be effective for more than thirty (30) days; provided
14 that, if the defendant has sought judicial review of an order of the commission issued pursuant to
15 this section, or if the commission has sought a decree of the court for the enforcement of the order,
16 the preliminary injunction shall remain in full force and effect until such time as the judicial review
17 or the commission's petition for the decree of enforcement is finally heard and determined.

18 (3) In any proceeding under this subsection, the commission may, if the prayer of the
19 original or amended complaint so requests, proceed at the proper time to obtain the relief provided
20 in § 34-37-6.

21 (4) The application by the commission for injunctive relief shall not prevent the
22 commission from continuing to prosecute the proceeding before it out of which the application
23 arises.

24 (5) Whenever a complaint shall be filed under the provisions of this subsection, the state
25 shall be liable, in an action brought against it, for the payment of such costs and damages as may
26 have been incurred or suffered by the defendant should final judgment be entered upon the
27 complaint in favor of the defendant, or should the commission, having been denied temporary relief
28 after the entry of a restraining order, fail to prosecute the matter further, or should the commission,
29 having been granted temporary relief, fail to prosecute the matter further, unless, in the latter two
30 (2) instances, failure to prosecute is caused by the making of an agreed settlement of any kind with
31 the defendant, including a conciliation agreement.

32 (6) All proceedings taken pursuant to the provisions of this section shall take precedence
33 over all other civil matters then pending before the court.

34 (n) ~~When a complaint issues after a finding of probable cause under subsection (b), any~~

1 ~~party may elect to have the claims asserted in that complaint decided in a civil action in lieu of a~~
2 ~~hearing under subsections (b) — (k). The election must be made not later than twenty (20) days after~~
3 ~~the receipt by the electing person of service of the complaint under subsection (b). The person~~
4 ~~making the election shall give notice of doing so to the commission, the attorney general, and to all~~
5 ~~other complainants and respondents to whom the charge relates.~~ The complainant or the respondent
6 may elect, within twenty (20) days after receipt of a finding of probable cause, to terminate by
7 written notice to the commission all proceedings before the commission and have the case heard in
8 the superior court. In the event of an election to terminate the proceedings, the commission shall
9 issue a right to sue notice to the complainant with a copy of the notice sent to all parties.

10 (1) The complainant shall have the right to commence suit in the superior court within any
11 county as provided in § 28-5-28 within ninety (90) days of the date of the right to sue notice. Either
12 party may claim a trial by jury in the superior court.

13 (2) Notwithstanding the termination of proceedings before the commission upon the
14 granting of the right to sue notice, the parties may agree to have the commission seek to conciliate
15 or mediate settlement of the case within the ninety (90) day period in which the complainant has
16 the right to commence suit in superior court.

17 (o) If an election is made under subsection (n):

18 (1) The complainant, the commission, or the attorney general may commence a civil action
19 on behalf of the aggrieved person in the superior court within any county as provided in § 28-5-28
20 within ninety (90) days ~~after receipt of notice of an election~~ of the date of the right to sue notice
21 under subsection (n);

22 (2) Any party may claim a trial by jury. Any aggrieved person with respect to the issues to
23 be determined in a civil action under this subsection may intervene as of right in that civil action;

24 (3) The superior court may make orders consistent with subsection (h) and may also award
25 punitive damages and such damages as the court deems just and proper; provided, that the court
26 shall not enter a consent order, dismissal stipulation or judgment settling claims of discrimination
27 in an action or proceeding under this chapter, unless the parties and their counsel attest that a waiver
28 of all or substantially all attorneys' fees was not compelled as a condition of the settlement.

29 SECTION 2. Section 11-24-2.1 of the General Laws in Chapter 11-24 entitled "Hotels And
30 Public Places" is hereby amended to read as follows:

31 **11-24-2.1. Discrimination based on disability, age, or sex prohibited.**

32 (a) Whenever in this chapter there shall appear the words "ancestral origin" there shall be
33 inserted immediately thereafter the words "disability, age, or sex."

34 (b) "Disability" means a disability as defined in § 42-87-1.

1 (c) The terms, as used regarding persons with disabilities, "auxiliary aids and services" and
2 "reasonable accommodation" have the same meaning as those terms are defined in § 42-87-1.1.

3 (d) "Otherwise qualified" means a person with a disability who meets the essential
4 eligibility requirements for participation in or receipt of benefits from the program or activity.

5 (e) Any person with a disability shall be entitled to full and equal access, as other members
6 of the general public to all public accommodations, subject to the conditions and limitations
7 established by law and applicable alike to all persons.

8 (f) Every person with a disability who has a personal assistive animal or who obtains a
9 personal assistive animal, shall be entitled to full and equal access to all public accommodations
10 provided for in this chapter, and shall not be required to pay extra compensation for a personal
11 assistive animal, but shall be liable for any damage done to the premises by a personal assistive
12 animal.

13 (g) Nothing in this section shall require any person providing a place of public
14 accommodation to, in any way, incur any greater liability or obligation, or provide a higher degree
15 of care for a person with a disability than for a person who is not disabled.

16 (h) "Sexual orientation" means having or being perceived as having an orientation for
17 heterosexuality, bisexuality, or homosexuality. ~~This definition is intended to describe the status of
18 persons and does not render lawful any conduct prohibited by the criminal laws of this state nor
19 impose any duty on a religious organization. This definition does not confer legislative approval of
20 that status, but is intended to assure the basic human rights of persons to partake of public
21 accommodations, regardless of that status.~~

22 (i) "Gender identity or expression" includes a person's actual or perceived gender, as well
23 as a person's gender identity, gender-related self image, gender-related appearance, or gender-
24 related expression, whether or not that gender identity, gender-related self image, gender-related
25 appearance, or gender-related expression is different from that traditionally associated with the
26 person's sex at birth.

27 SECTION 3. Section 28-5-6 of the General Laws in Chapter 28-5 entitled "Fair
28 Employment Practices" is hereby amended to read as follows:

29 **28-5-6. Definitions.**

30 When used in this chapter:

31 (1) "Age" means anyone who is at least forty (40) years of age.

32 (2) "Because of sex" or "on the basis of sex" include, but are not limited to, because of or
33 on the basis of pregnancy, childbirth, or related medical conditions, and women affected by
34 pregnancy, childbirth, or related medical conditions shall be treated the same for all employment

1 related purposes, including receipt of benefits under fringe benefit programs, as other persons not
2 so affected but similar in their ability or inability to work, and nothing in this chapter shall be
3 interpreted to permit otherwise.

4 (3) "Commission" means the Rhode Island commission against discrimination created by
5 this chapter.

6 (4) "Conviction" means, for the purposes of this chapter only, any verdict or finding of
7 guilt after a criminal trial or any plea of guilty or nolo contendere to a criminal charge.

8 (5) "Disability" means a disability as defined in § 42-87-1.

9 (6) "Discriminate" includes segregate or separate.

10 (7) "Employee" does not include any individual employed by his or her parents, spouse, or
11 child, or in the domestic service of any person.

12 (8)(i) "Employer" includes the state and all political subdivisions of the state and any
13 person in this state employing four (4) or more individuals, and any person acting in the interest of
14 an employer directly or indirectly.

15 (ii) Nothing in this subdivision shall be construed to apply to a religious corporation,
16 association, educational institution, or society with respect to the employment of individuals of its
17 religion to perform work connected with the carrying on of its activities.

18 (9) "Employment agency" includes any person undertaking with or without compensation
19 to procure opportunities to work, or to procure, recruit, refer, or place employees.

20 (10) "Firefighter" means an employee the duties of whose position includes work
21 connected with the control and extinguishment of fires or the maintenance and use of firefighting
22 apparatus and equipment, including an employee engaged in this activity who is transferred or
23 promoted to a supervisory or administrative position.

24 (11) "Gender identity or expression" includes a person's actual or perceived gender, as well
25 as a person's gender identity, gender-related self image, gender-related appearance, or gender-
26 related expression; whether or not that gender identity, gender-related self image, gender-related
27 appearance, or gender-related expression is different from that traditionally associated with the
28 person's sex at birth.

29 (12) "Labor organization" includes any organization which exists for the purpose, in whole
30 or in part, of collective bargaining or of dealing with employers concerning grievances, terms or
31 conditions of employment, or of other mutual aid or protection in relation to employment.

32 (13) "Law enforcement officer" means an employee the duties of whose position include
33 investigation, apprehension, or detention of individuals suspected or convicted of offenses against
34 the criminal laws of the state, including an employee engaged in such activity who is transferred or

1 promoted to a supervisory or administrative position. For the purpose of this subdivision,
2 "detention" includes the duties of employees assigned to guard individuals incarcerated in any penal
3 institution.

4 (14) "Person" includes one or more individuals, partnerships, associations, organizations,
5 corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

6 (15) "Religion" includes all aspects of religious observance and practice, as well as belief,
7 unless an employer, union or employment agency demonstrates that it is unable to reasonably
8 accommodate to an employee's or prospective employee's or union member's religious observance
9 or practice without undue hardship on the conduct of its business.

10 (16) "Sexual orientation" means having or being perceived as having an orientation for
11 heterosexuality, bisexuality, or homosexuality. ~~This definition is intended to describe the status of
12 persons and does not render lawful any conduct prohibited by the criminal laws of this state nor
13 impose any duty on a religious organization. This definition does not confer legislative approval of
14 that status, but is intended to assure the basic human rights of persons to obtain and hold
15 employment, regardless of that status.~~

16 (17) The terms, as used regarding persons with disabilities:

17 (i) "Auxiliary aids and services" and "reasonable accommodation" shall have the same
18 meaning as those items are defined in § 42-87-1.1; and

19 (ii) "Hardship" means an "undue hardship" as defined in § 42-87-1.1.

20 SECTION 4. Sections 34-37-4.4 and 34-37-4.5 of the General Laws in Chapter 34-37
21 entitled "Rhode Island Fair Housing Practices Act" are hereby repealed.

22 ~~**34-37-4.4. Discrimination based on sexual orientation -- Exemption.**~~

23 ~~Nothing in this title shall prohibit an owner of a housing accommodation from refusing to
24 rent to a person based on his or her sexual orientation if the housing accommodation is three (3)
25 units or less, one (1) of which is occupied by the owner.~~

26 ~~**34-37-4.5. Discrimination based on gender identity or expression -- Exemption.**~~

27 ~~Nothing in this title shall prohibit an owner of a housing accommodation from refusing to
28 rent to a person based on his or her gender identity or expression if the housing accommodation is
29 three (3) units or less, one of which is occupied by the owner.~~

30 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY -- RHODE ISLAND FAIR HOUSING PRACTICES ACT

1 This act would amend the definition of sexual orientation in regard to fair housing
2 practices. This act would also allow all parties including the attorney general and the commission
3 to remove the case to superior court. This act would also require the commission to issue a notice
4 of right to sue when the case is removed to superior court. This act would also allow the parties
5 ninety (90) days, from the notice of right to sue, to commence the suit in superior court. This act
6 would also allow mediation during the ninety (90) day period. This act would also prohibit the
7 court from entering any consent order, dismiss stipulation or judgment of settlement unless all
8 parties attest that a waiver of attorneys' fees was not compelled as a condition of the settlement.
9 This act would also repeal the exemptions for discrimination based upon sexual orientation, gender
10 identity or expression.

11 This act would take effect upon passage.

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