

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.

19 (a) Using unfavorable discharge from military
20 service as a valid employment criterion when
21 authorized by federal law or regulation or when a
22 position of employment involves the exercise of
23 fiduciary responsibilities as defined by rules and

1 regulations which the Department shall adopt; or -

2 (b) Participating in a bona fide recruiting
3 incentive program, sponsored by a branch of the United
4 States Armed Forces, a reserve component of the United
5 States Armed Forces, or any National Guard or Naval
6 Militia, where participation in the program is limited
7 by the sponsoring branch based upon the service
8 member's discharge status.

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

14 (5) Merit and Retirement Systems.

15 (a) Applying different standards of compensation,
16 or different terms, conditions or privileges of
17 employment pursuant to a merit or retirement system
18 provided that such system or its administration is not
19 used as a subterfuge for or does not have the effect of
20 unlawful discrimination.

21 (b) Effecting compulsory retirement of any
22 employee who has attained 65 years of age and who, for
23 the 2-year period immediately preceding retirement, is
24 employed in a bona fide executive or a high
25 policymaking position, if such employee is entitled to
26 an immediate nonforfeitable annual retirement benefit

1 from a pension, profit-sharing, savings, or deferred
2 compensation plan, or any combination of such plans of
3 the employer of such employee, which equals, in the
4 aggregate, at least \$44,000. If any such retirement
5 benefit is in a form other than a straight life annuity
6 (with no ancillary benefits) or if the employees
7 contribute to any such plan or make rollover
8 contributions, the retirement benefit shall be
9 adjusted in accordance with regulations prescribed by
10 the Department, so that the benefit is the equivalent
11 of a straight life annuity (with no ancillary benefits)
12 under a plan to which employees do not contribute and
13 under which no rollover contributions are made.

14 (c) Until January 1, 1994, effecting compulsory
15 retirement of any employee who has attained 70 years of
16 age, and who is serving under a contract of unlimited
17 tenure (or similar arrangement providing for unlimited
18 tenure) at an institution of higher education as
19 defined by Section 1201(a) of the Higher Education Act
20 of 1965.

21 (6) Training and Apprenticeship programs. Establishing
22 an educational requirement as a prerequisite to selection
23 for a training or apprenticeship program, provided such
24 requirement does not operate to discriminate on the basis
25 of any prohibited classification except age.

26 (7) Police and Firefighter/Paramedic Retirement.

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

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

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

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

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

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

1 (b) the age of hiring in effect on the date of such
2 failure or refusal to hire under applicable State or
3 local law enacted after the date of enactment of the
4 federal Age Discrimination in Employment Act
5 Amendments of 1996 (P.L. 104-208).

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

7 "Firefighter/paramedic" means an employee, the duties
8 of whose position are primarily to perform work directly
9 connected with the control and extinguishment of fires or
10 the maintenance and use of firefighting apparatus and
11 equipment, or to provide emergency medical services,
12 including an employee engaged in this activity who is
13 transferred to a supervisory or administrative position.

14 "Law enforcement officer" means an employee, the
15 duties of whose position are primarily the investigation,
16 apprehension, or detention of individuals suspected or
17 convicted of criminal offenses, including an employee
18 engaged in this activity who is transferred to a
19 supervisory or administrative position.

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

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

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

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

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

4 (d) which contains any provision that would be
5 superseded by this amendatory Act of 1987 (Public Act
6 85-748),

7 such amendatory Act of 1987 shall not apply until the
8 termination of such collective bargaining agreement or January
9 1, 1990, whichever occurs first.

10 (C)(1) For purposes of this Act, the term "disability"
11 shall not include any employee or applicant who is currently
12 engaging in the illegal use of drugs, when an employer acts on
13 the basis of such use.

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

16 (a) has successfully completed a supervised drug
17 rehabilitation program and is no longer engaging in the
18 illegal use of drugs, or has otherwise been rehabilitated
19 successfully and is no longer engaging in such use;

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

22 (c) is erroneously regarded as engaging in such use,
23 but is not engaging in such use.

24 It shall not be a violation of this Act for an employer to
25 adopt or administer reasonable policies or procedures,
26 including but not limited to drug testing, designed to ensure

1 that an individual described in subparagraph (a) or (b) is no
2 longer engaging in the illegal use of drugs.

3 (3) An employer:

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

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

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

13 (d) may hold an employee who engages in the illegal use
14 of drugs or who is an alcoholic to the same qualification
15 standards for employment or job performance and behavior
16 that such employer holds other employees, even if any
17 unsatisfactory performance or behavior is related to the
18 drug use or alcoholism of such employee; and

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

21 (i) employees comply with the standards
22 established in such regulations of the United States
23 Department of Defense, if the employees of the employer
24 are employed in an industry subject to such
25 regulations, including complying with regulations (if
26 any) that apply to employment in sensitive positions in

1 such an industry, in the case of employees of the
2 employer who are employed in such positions (as defined
3 in the regulations of the Department of Defense);

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

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

24 (4) For purposes of this Act, a test to determine the
25 illegal use of drugs shall not be considered a medical
26 examination. Nothing in this Act shall be construed to

1 encourage, prohibit, or authorize the conducting of drug
2 testing for the illegal use of drugs by job applicants or
3 employees or making employment decisions based on such test
4 results.

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

9 (a) test employees of such employer in, and applicants
10 for, positions involving safety-sensitive duties for the
11 illegal use of drugs and for on-duty impairment by alcohol;
12 and

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

17 (Source: P.A. 97-877, eff. 8-2-12.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.