

## **Sexual Orientation Discrimination May Be Added to IL Human Rights Act**

On January 10, 2005 the Senate of the Illinois General Assembly passed Senate Bill 3186 which proposes the prohibition of discrimination against employees based on their sexual orientation. Twice in the past similar bills passed the House only to be voted down in the Senate. The bill then moved to the House on January 11<sup>th</sup>, the final day of the General Assembly's session. House sponsors who vowed to pass this legislation made good on their promise as the bill passed easily. Next the bill moves to the Governor's desk to be signed into law, or vetoed. The Governor has already said that he would sign the bill into law if it is passed in the Senate and House.

The bill would amend the Illinois Human Rights Act making it unlawful to discriminate against any person based on his/her sexual orientation in employment decisions as well as housing and finance matters. The bill defines sexual orientation as: "...actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth." The definition goes on to state that sexual orientation does not include a "physical attraction to a minor by an adult." The effect of this proposed change to the Human Rights Act would be to place prohibitions against discrimination based on sexual orientation on equal ground with discrimination prohibitions based on race, color, religion, national origin, ancestry, age, sex, marital status, familial status and handicap.

Prior to the passage of this bill, some local ordinances in the state had already made discrimination against individuals based on their sexual orientation unlawful. The City of Chicago has long made such discrimination unlawful as part of its local ordinances. However, this amendment to the Illinois Human Rights Act will be new for most employers in the state of Illinois. Please see the following pages for a copy of the bill.

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93RD GENERAL ASSEMBLY  
FIRST CONFERENCE COMMITTEE REPORT  
ON SENATE BILL 3186

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To the President of the Senate and the Speaker of the House  
of Representatives:

We, the conference committee appointed to consider the  
differences between the houses in relation to House Amendment  
Nos. 1 and 2 to Senate Bill 3186, recommend the following:

(1) that the House recede from House Amendments Nos. 1 and  
2; and

(2) that Senate Bill 3186 be further amended by replacing  
everything after the enacting clause with the following:

"Section 5. The Illinois Human Rights Act is amended by  
changing Sections 1-102, 1-103, 3-103, and 3-106 and the  
heading of Article 1 and adding Section 1-101.1 as follows:

(775 ILCS 5/Art. 1 heading)

ARTICLE 1.

GENERAL PROVISIONS TITLE, POLICY AND DEFINITIONS

(775 ILCS 5/1-101.1 new)

Sec. 1-101.1. Construction. Nothing in this Act shall be  
construed as requiring any employer, employment agency, or  
labor organization to give preferential treatment or special  
rights based on sexual orientation or to implement affirmative  
action policies or programs based on sexual orientation.

(775 ILCS 5/1-102) (from Ch. 68, par. 1-102)

29 Sec. 1-102. Declaration of Policy. It is the public policy of this State:

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1 (A) Freedom from Unlawful Discrimination. To secure for all  
2 individuals within Illinois the freedom from discrimination  
3 against any individual because of his or her race, color,  
4 religion, sex, national origin, ancestry, age, marital status,  
5 physical or mental handicap, military status, sexual  
6 orientation, or unfavorable discharge from military service in  
7 connection with employment, real estate transactions, access  
8 to financial credit, and the availability of public  
9 accommodations.

10 (B) Freedom from Sexual Harassment-Employment and Higher  
11 Education. To prevent sexual harassment in employment and  
12 sexual harassment in higher education.

13 (C) Freedom from Discrimination Based on Citizenship  
14 Status-Employment. To prevent discrimination based on  
15 citizenship status in employment.

16 (D) Freedom from Discrimination Based on Familial  
17 Status-Real Estate Transactions. To prevent discrimination  
18 based on familial status in real estate transactions.

19 (E) Public Health, Welfare and Safety. To promote the  
20 public health, welfare and safety by protecting the interest of  
21 all people in Illinois in maintaining personal dignity, in  
22 realizing their full productive capacities, and in furthering  
23 their interests, rights and privileges as citizens of this  
24 State.

25 (F) Implementation of Constitutional Guarantees. To secure  
26 and guarantee the rights established by Sections 17, 18 and 19  
27 of Article I of the Illinois Constitution of 1970.

28 (G) Equal Opportunity, Affirmative Action. To establish  
29 Equal Opportunity and Affirmative Action as the policies of  
30 this State in all of its decisions, programs and activities,  
31 and to assure that all State departments, boards, commissions  
32 and instrumentalities rigorously take affirmative action to  
33 provide equality of opportunity and eliminate the effects of  
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past discrimination in the internal affairs of State government

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1 and in their relations with the public.

2 (H) Unfounded Charges. To protect citizens of this State  
3 against unfounded charges of unlawful discrimination, sexual  
4 harassment in employment and sexual harassment in higher  
5 education, and discrimination based on citizenship status in  
6 employment.

7 (Source: P.A. 87-579; 88-178.)

8 (775 ILCS 5/1-103) (from Ch. 68, par. 1-103)

9 Sec. 1-103. General Definitions. When used in this Act,  
10 unless the context requires otherwise, the term:

11 (A) Age. "Age" means the chronological age of a person who  
12 is at least 40 years old, except with regard to any practice  
13 described in Section 2-102, insofar as that practice concerns  
14 training or apprenticeship programs. In the case of training or  
15 apprenticeship programs, for the purposes of Section 2-102,  
16 "age" means the chronological age of a person who is 18 but not  
17 yet 40 years old.

18 (B) Aggrieved Party. "Aggrieved party" means a person who  
19 is alleged or proved to have been injured by a civil rights  
20 violation or believes he or she will be injured by a civil  
21 rights violation under Article 3 that is about to occur.

22 (C) Charge. "Charge" means an allegation filed with the  
23 Department by an aggrieved party or initiated by the Department  
24 under its authority.

25 (D) Civil Rights Violation. "Civil rights violation"  
26 includes and shall be limited to only those specific acts set  
27 forth in Sections 2-102, 2-103, 2-105, 3-102, 3-103, 3-104,  
28 3-104.1, 3-105, 4-102, 4-103, 5-102, 5A-102 and 6-101 of this  
29 Act.

30 (E) Commission. "Commission" means the Human Rights  
31 Commission created by this Act.

32 (F) Complaint. "Complaint" means the formal pleading filed  
33 by the Department with the Commission following an

1 investigation and finding of substantial evidence of a civil  
2 rights violation.

3 (G) Complainant. "Complainant" means a person including  
4 the Department who files a charge of civil rights violation  
5 with the Department or the Commission.

6 (H) Department. "Department" means the Department of Human  
7 Rights created by this Act.

8 (I) Handicap. "Handicap" means a determinable physical or  
9 mental characteristic of a person, including, but not limited  
10 to, a determinable physical characteristic which necessitates  
11 the person's use of a guide, hearing or support dog, the  
12 history of such characteristic, or the perception of such  
13 characteristic by the person complained against, which may  
14 result from disease, injury, congenital condition of birth or  
15 functional disorder and which characteristic:

16 (1) For purposes of Article 2 is unrelated to the  
17 person's ability to perform the duties of a particular job  
18 or position and, pursuant to Section 2-104 of this Act, a  
19 person's illegal use of drugs or alcohol is not a handicap;

20 (2) For purposes of Article 3, is unrelated to the  
21 person's ability to acquire, rent or maintain a housing  
22 accommodation;

23 (3) For purposes of Article 4, is unrelated to a  
24 person's ability to repay;

25 (4) For purposes of Article 5, is unrelated to a  
26 person's ability to utilize and benefit from a place of  
27 public accommodation.

28 (J) Marital Status. "Marital status" means the legal status  
29 of being married, single, separated, divorced or widowed.

30 (J-1) Military Status. "Military status" means a person's  
31 status on active duty in the armed forces of the United States,  
32 status as a current member of any reserve component of the  
33 armed forces of the United States, including the United States  
34 Army Reserve, United States Marine Corps Reserve, United States

1 Navy Reserve, United States Air Force Reserve, and United  
2 States Coast Guard Reserve, or status as a current member of  
3 the Illinois Army National Guard or Illinois Air National  
4 Guard.

5 (K) National Origin. "National origin" means the place in  
6 which a person or one of his or her ancestors was born.

7 (L) Person. "Person" includes one or more individuals,  
8 partnerships, associations or organizations, labor  
9 organizations, labor unions, joint apprenticeship committees,  
10 or union labor associations, corporations, the State of  
11 Illinois and its instrumentalities, political subdivisions,  
12 units of local government, legal representatives, trustees in  
13 bankruptcy or receivers.

14 (M) Public Contract. "Public contract" includes every  
15 contract to which the State, any of its political subdivisions  
16 or any municipal corporation is a party.

17 (N) Religion. "Religion" includes all aspects of religious  
18 observance and practice, as well as belief, except that with  
19 respect to employers, for the purposes of Article 2, "religion"  
20 has the meaning ascribed to it in paragraph (F) of Section  
21 2-101.

22 (O) Sex. "Sex" means the status of being male or female.

23 (O-1) Sexual orientation. "Sexual orientation" means  
24 actual or perceived heterosexuality, homosexuality,  
25 bisexuality, or gender-related identity, whether or not  
26 traditionally associated with the person's designated sex at  
27 birth. "Sexual orientation" does not include a physical or  
28 sexual attraction to a minor by an adult.

29 (P) Unfavorable Military Discharge. "Unfavorable military  
30 discharge" includes discharges from the Armed Forces of the  
31 United States, their Reserve components or any National Guard  
32 or Naval Militia which are classified as RE-3 or the equivalent  
33 thereof, but does not include those characterized as RE-4 or  
34 "Dishonorable".

1 (Q) Unlawful Discrimination. "Unlawful discrimination"  
2 means discrimination against a person because of his or her  
3 race, color, religion, national origin, ancestry, age, sex,  
4 marital status, handicap, military status, sexual orientation,  
5 or unfavorable discharge from military service as those terms  
6 are defined in this Section.

7 (Source: P.A. 93-941, eff. 8-16-04.)

8 (775 ILCS 5/3-103) (from Ch. 68, par. 3-103)

9 Sec. 3-103. Blockbusting. It is a civil rights violation  
10 for any person to:

11 (A) Solicitation. Solicit for sale, lease, listing or  
12 purchase any residential real estate within this State, on the  
13 grounds of loss of value due to the present or prospective  
14 entry into the vicinity of the property involved of any person  
15 or persons of any particular race, color, religion, national  
16 origin, ancestry, age, sex, sexual orientation, marital  
17 status, familial status or handicap.

18 (B) Statements. Distribute or cause to be distributed,  
19 written material or statements designed to induce any owner of  
20 residential real estate in this State to sell or lease his or  
21 her property because of any present or prospective changes in  
22 the race, color, religion, national origin, ancestry, age, sex,  
23 sexual orientation, marital status, familial status or  
24 handicap of residents in the vicinity of the property involved.

25 (C) Creating Alarm. Intentionally create alarm, among  
26 residents of any community, by transmitting communications in  
27 any manner, including a telephone call whether or not  
28 conversation thereby ensues, with a design to induce any owner  
29 of residential real estate in this state to sell or lease his  
30 or her property because of any present or prospective entry  
31 into the vicinity of the property involved of any person or  
32 persons of any particular race, color, religion, national  
33 origin, ancestry, age, sex, sexual orientation, marital

2 (Source: P.A. 86-910.)

3 (775 ILCS 5/3-106) (from Ch. 68, par. 3-106)  
4 Sec. 3-106. Exemptions.) Nothing contained in Section  
5 3-102 shall prohibit:

6 (A) Private Sales of Single Family Homes. Any sale of a  
7 single family home by its owner so long as the following  
8 criteria are met:

9 (1) The owner does not own or have a beneficial  
10 interest in more than three single family homes at the time  
11 of the sale;

12 (2) The owner or a member of his or her family was the  
13 last current resident of the home;

14 (3) The home is sold without the use in any manner of  
15 the sales or rental facilities or services of any real  
16 estate broker or salesman, or of any employee or agent of  
17 any real estate broker or salesman;

18 (4) The home is sold without the publication, posting  
19 or mailing, after notice, of any advertisement or written  
20 notice in violation of paragraph (F) of Section 3-102.

21 (B) Apartments. Rental of a housing accommodation in a  
22 building which contains housing accommodations for not more  
23 than five families living independently of each other, if the  
24 lessor or a member of his or her family resides in one of the  
25 housing accommodations;

26 (C) Private Rooms. Rental of a room or rooms in a private  
27 home by an owner if he or she or a member of his or her family  
28 resides therein or, while absent for a period of not more than  
29 twelve months, if he or she or a member of his or her family  
30 intends to return to reside therein;

31 (D) Reasonable local, State, or Federal restrictions  
32 regarding the maximum number of occupants permitted to occupy a  
33 dwelling.

1 (E) Religious Organizations. A religious organization,  
2 association, or society, or any nonprofit institution or  
3 organization operated, supervised or controlled by or in

4 conjunction with a religious organization, association, or  
5 society, from limiting the sale, rental or occupancy of a  
6 dwelling which it owns or operates for other than a commercial  
7 purpose to persons of the same religion, or from giving  
8 preference to such persons, unless membership in such religion  
9 is restricted on account of race, color, or national origin.

10 (F) Sex. Restricting the rental of rooms in a housing  
11 accommodation to persons of one sex.

12 (G) Persons Convicted of Drug-Related Offenses. Conduct  
13 against a person because such person has been convicted by any  
14 court of competent jurisdiction of the illegal manufacture or  
15 distribution of a controlled substance as defined in Section  
16 102 of the federal Controlled Substances Act (21 U.S.C. 802).

17 (H) Persons engaged in the business of furnishing  
18 appraisals of real property from taking into consideration  
19 factors other than those based on unlawful discrimination or  
20 familial status in furnishing appraisals.

21 (H-1) The owner of an owner-occupied residential building  
22 with 5 or fewer units (including the unit in which the owner  
23 resides) from making decisions regarding whether to rent to a  
24 person based upon that person's sexual orientation.

25 (I) Housing for Older Persons. No provision in this Article  
26 regarding familial status shall apply with respect to housing  
27 for older persons.

28 (1) As used in this Section, "housing for older  
29 persons" means housing:

30 (a) provided under any State or Federal program  
31 that the Department determines is specifically  
32 designed and operated to assist elderly persons (as  
33 defined in the State or Federal program); or

34 (b) intended for, and solely occupied by, persons

1 62 years of age or older; or

2 (c) intended and operated for occupancy by persons  
3 55 years of age or older and:

4 (i) at least 80% of the occupied units are  
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6 occupied by at least one person who is 55 years of  
7 age or older;

8 (ii) the housing facility or community  
9 publishes and adheres to policies and procedures  
10 that demonstrate the intent required under this  
11 subdivision (c); and

12 (iii) the housing facility or community  
13 complies with rules adopted by the Department for  
14 verification of occupancy, which shall:

15 (aa) provide for verification by reliable  
16 surveys and affidavits; and

17 (bb) include examples of the types of  
18 policies and procedures relevant to a  
19 determination of compliance with the  
20 requirement of clause (ii).

21 These surveys and affidavits shall be admissible in  
22 administrative and judicial proceedings for the purposes of  
23 such verification.

24 (2) Housing shall not fail to meet the requirements for  
25 housing for older persons by reason of:

26 (a) persons residing in such housing as of the  
27 effective date of this amendatory Act of 1989 who do  
28 not meet the age requirements of subsections (1)(b) or  
29 (c); provided, that new occupants of such housing meet  
30 the age requirements of subsections (1)(b) or (c) of  
31 this subsection; or

32 (b) unoccupied units; provided, that such units  
33 are reserved for occupancy by persons who meet the age  
34 requirements of subsections (1)(b) or (c) of this  
subsection.

1 (3) (a) A person shall not be held personally liable  
2 for monetary damages for a violation of this Article if  
3 the person reasonably relied, in good faith, on the  
4 application of the exemption under this subsection (I)  
5 relating to housing for older persons.  
6

7 (b) For the purposes of this item (3), a person may  
8 show good faith reliance on the application of the  
9 exemption only by showing that:

10 (i) the person has no actual knowledge that the  
11 facility or community is not, or will not be,  
12 eligible for the exemption; and

13 (ii) the facility or community has stated  
14 formally, in writing, that the facility or  
15 community complies with the requirements for the  
16 exemption.

(Source: P.A. 89-520, eff. 7-18-96.)".

17 Submitted on November 17, 2004.

18 Carol Ronen

19 s/Senator Ronen

20 John J. Cullerton

21 s/Senator Cullerton

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