



**AN BILLE MEABHAIR-SHLÁINTE (FRITH-IDIRDHEALÚ),
2013
MENTAL HEALTH (ANTI-DISCRIMINATION) BILL 2013**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Disqualification for membership of Dáil Éireann.
 3. Persons ineligible to be called for jury service.
 4. Disqualification of company directors.
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ACT REFERRED TO

Companies Act 1963	1963, No. 33
Electoral Act 1992	1992, No. 23
Juries Act 1976	1976, No. 4
Mental Health Act 2001	2001, No. 25
National Lottery Act 1986	1986, No. 28



**AN BILLE MEABHAIR-SHLÁINTE (FRITH-IDIRDHEALÚ),
2013
MENTAL HEALTH (ANTI-DISCRIMINATION) BILL 2013**

BILL

5 *entitled*

AN ACT TO MAKE PROVISION, IN THE CONTEXT OF EVIDENT AND PERSISTENT UNFAIR DISCRIMINATION AGAINST PERSONS WHO HAVE BEEN DIAGNOSED WITH A MENTAL ILLNESS OR WHO HAVE IN THE PAST BEEN DIAGNOSED WITH A MENTAL ILLNESS, FOR THE PROTECTION OF CERTAIN CLASSES OF PERSONS HAVING BEEN DIAGNOSED WITH A MENTAL ILLNESS AND TO PROHIBIT THE DISCRIMINATION AGAINST SUCH PERSONS AND TO PROVIDE FOR THE GRANT OF CERTAIN PROTECTIONS IN MATTERS OF CONTRACT LAW.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

20 “consumer” means a natural person (whether in the State or not) who is acting for purposes unrelated to the person’s trade, business or profession;

“contravene”, in relation to a provision, includes failure to comply with the provision;

25 “contract of insurance” means a contract whereby a person called the insurer agrees in consideration of the money paid to him by another person called the insured to indemnify the latter against loss resulting to him or her or it on the happening of certain events;

30 “credit institution” means a person authorised in the State to accept deposits or other repayable funds from the public and to grant credit on its own account;

“decision-making ability” means the functional ability of a person to make a decision;

35 “mental health condition” means a condition, disease or illness which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.

(2) In this Act—

- (a) a reference to any enactment shall, unless the contrary otherwise requires, be construed to a reference to that enactment as amended or extended by or under any subsequent enactment including this Act,
- (b) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended, and 5
- (c) a reference to a subsection, paragraph and/or subparagraph is a reference to the subsection, paragraph and/or subparagraph of the provision in which the reference occurs unless it is indicated the reference to some other provision is intended. 10

Disqualification for membership of Dáil Éireann.

2.—(1) Section 41 of the Electoral Act 1992 is amended by the substitution of the following for paragraph (i):

“(i) a person who has been found to lack decision-making ability required to fulfill his or her duties as a member of Dáil Éireann,”. 15

(2) Section 42(1) of the Electoral Act 1992 is hereby amended by substituting the following for paragraph (a):

“(a) a person who has been found to lack decision-making ability required to fulfill his or her duties as a member of Dáil Éireann and such lack of decision-making ability is likely to be permanent, or”. 20

Persons ineligible to be called for jury service.

3.—Schedule 1, Part 1, sub-section (3) of the Juries Act 1976 is hereby amended by deleting the words: 25

“A person who suffers or has suffered from mental illness or mental disability and on account of that condition either—

- (a) is resident in a hospital or other similar institution, or
- (b) regularly attends for treatment by a medical practitioner.”. 30

Disqualification of company directors.

4.—Schedule 1, Table A, section 91(d), Schedule 1, Table C, section 39(d) of the Companies Act 1963 is amended by substituting the phrase “becomes of unsound mind”, where it appears for “lacks decision-making ability necessary to fulfill his or her functions as a company director”. 35

National Lottery prizes.

5.—Section 28(2)(b) of the National Lottery Act 1986 is amended by the deletion of:

“or of unsound mind”.

Non-discrimination of persons in interpretation of law.

6.—In construing a provision of any enactment or rule of law—

- (a) that is obscure or ambiguous, or 40
- (b) that on literal interpretation would give rise to a discriminatory effect on the grounds of the existence of a mental disorder,

a court shall interpret that provision so as not to impair the rights of any person solely on the basis that the person is experiencing or has in the past experienced a mental health condition.

5 7.—(1) An insurer shall not, in deciding whether to indemnify or offer to indemnify a consumer require the consumer to disclose his or her medical history, if any, in respect of mental illness and, if a matter within its own knowledge or otherwise known to the insurer shall not take knowledge of prior mental illness into account in exercising its commercial judgment. Offers of indemnity.

10 (2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

15 (3) It shall be a defence for a person charged with an offence under *subsection (2)* consisting of a contravention of *subsection (1)* to show that he or she took all such steps as were reasonably open to him or her to ensure compliance with *subsection (1)*.

20 (4) Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under *subsection (2)* is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and any persons found at that place.

25 (5) A warrant issued under this section shall authorise a named member of the Garda Síochána alone or accompanied by such other members of the Garda Síochána and such other persons as may be necessary—

30 (a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,

(b) to search it and any persons found there, and

35 (c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under *subsection (3)*.

(6) Any person who—

40 (a) obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under *subsection (4)*, or

(b) fails or refuses to comply with a requirement under this section,

45 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(7) A member of the Garda Síochána may arrest without warrant any person whom the member reasonably suspects of having committed an offence under *subsection (6)*.

(8) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of the person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 5

(9) Where the affairs of a body corporate are managed by its members, *subsection (8)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate. 10

(10) In this section “place” includes any dwelling or any building or part of a building. 15

Terms in breach of Act void.

8.—Any term in a contract of insurance or for credit or any representation or warranty obtained from a consumer in contravention of sections 7 or 8 shall be unenforceable as against the consumer but the contract of insurance shall otherwise remain in force.

Offers of credit.

9.—(1) A credit institution shall not, in deciding whether to enter into a contract for the provision of credit or to offer credit to a consumer shall not require the consumer to disclose his or her medical history, if any, in respect of mental illness and, if a matter within its own knowledge or otherwise known to the credit institution shall not take knowledge of prior mental illness into account in exercising its commercial judgment. 20 25

(2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both. 30

(3) It shall be a defence for a person charged with an offence under *subsection (2)* consisting of a contravention of *subsection (1)* to show that he or she took all such steps as were reasonably open to him or her to ensure compliance with *subsection (1)*.

(4) Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under *subsection (2)* is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and any persons found at that place. 35 40

(5) A warrant issued under this section shall authorise a named member of the Garda Síochána alone or accompanied by such other members of the Garda Síochána and such other persons as may be necessary— 45

(a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,

(b) to search it and any persons found there, and

(c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under *subsection (3)*.

5 (6) Any person who—

(a) obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under *subsection (4)*, or

10 (b) fails or refuses to comply with a requirement under this section,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

15 (7) A member of the Garda Síochána may arrest without warrant any person whom the member reasonably suspects of having committed an offence under *subsection (6)*.

20 (8) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of the person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

25 (9) Where the affairs of a body corporate are managed by its members, *subsection (8)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

30 (10) In this section “place” includes any dwelling or any building or part of a building.

10.—(1) This Act may be cited as the Mental Health (Anti- Short title.
Discrimination) Act 2013.

35 (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.