

ASSEMBLY, No. 1168

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

**Assemblywoman SHEILA Y. OLIVER
District 34 (Essex and Passaic)**

Co-Sponsored by:

Assemblywoman Evans and Assemblyman L.Smith

SYNOPSIS

Prohibits job discrimination for reasons unrelated to job performance.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/29/2008)

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2

1 AN ACT concerning unlawful employment practices and unlawful
2 discrimination and amending P.L.1945, c.169.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to read
8 as follows:

9 11. It shall be an unlawful employment practice, or, as the case
10 may be, an unlawful discrimination:

11 a. For an employer, because of the race, creed, color, national
12 origin, ancestry, age, marital status, affectional or sexual
13 orientation, genetic information, sex, disability or atypical
14 hereditary cellular or blood trait of any individual, or because of the
15 liability for service in the Armed Forces of the United States or the
16 nationality of any individual, or because of the refusal to submit to
17 a genetic test or make available the results of a genetic test to an
18 employer, or because of any activity of the individual which is not
19 illegal and has no detrimental effect on work performance, or
20 because of any characteristic or condition of the individual which
21 has no detrimental effect on work performance, to refuse to hire or
22 employ or to bar or to discharge or require to retire, unless justified
23 by lawful considerations other than age, from employment such
24 individual or to discriminate against such individual in
25 compensation or in terms, conditions or privileges of employment;
26 provided, however, it shall not be an unlawful employment practice
27 to refuse to accept for employment an applicant who has received a
28 notice of induction or orders to report for active duty in the armed
29 forces; provided further that nothing herein contained shall be
30 construed to bar an employer from refusing to accept for
31 employment any person on the basis of sex in those certain
32 circumstances where sex is a bona fide occupational qualification,
33 reasonably necessary to the normal operation of the particular
34 business or enterprise; provided further that nothing herein
35 contained shall be construed to bar an employer from refusing to
36 accept for employment or to promote any person over 70 years of
37 age; provided further that it shall not be an unlawful employment
38 practice for a club exclusively social or fraternal to use club
39 membership as a uniform qualification for employment, or for a
40 religious association or organization to utilize religious affiliation
41 as a uniform qualification in the employment of clergy, religious
42 teachers or other employees engaged in the religious activities of
43 the association or organization, or in following the tenets of its
44 religion in establishing and utilizing criteria for employment of an
45 employee; provided further, that it shall not be an unlawful

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 employment practice to require the retirement of any employee
2 who, for the two-year period immediately before retirement, is
3 employed in a bona fide executive or a high policy-making position,
4 if that employee is entitled to an immediate non-forfeitable annual
5 retirement benefit from a pension, profit sharing, savings or
6 deferred retirement plan, or any combination of those plans, of the
7 employer of that employee which equals in the aggregate at least
8 \$27,000.00; and provided further that an employer may restrict
9 employment to citizens of the United States where such restriction
10 is required by federal law or is otherwise necessary to protect the
11 national interest.

12 For the purposes of this subsection, a "bona fide executive" is a
13 top level employee who exercises substantial executive authority
14 over a significant number of employees and a large volume of
15 business. A "high policy-making position" is a position in which a
16 person plays a significant role in developing policy and in
17 recommending the implementation thereof.

18 b. For a labor organization, because of the race, creed, color,
19 national origin, ancestry, age, marital status, affectional or sexual
20 orientation, disability or sex of any individual, or because of the
21 liability for service in the Armed Forces of the United States or
22 nationality of any individual, to exclude or to expel from its
23 membership such individual or to discriminate in any way against
24 any of its members, against any applicant for, or individual included
25 in, any apprentice or other training program or against any
26 employer or any individual employed by an employer; provided,
27 however, that nothing herein contained shall be construed to bar a
28 labor organization from excluding from its apprentice or other
29 training programs any person on the basis of sex in those certain
30 circumstances where sex is a bona fide occupational qualification
31 reasonably necessary to the normal operation of the particular
32 apprentice or other training program.

33 c. For any employer or employment agency to print or circulate
34 or cause to be printed or circulated any statement, advertisement or
35 publication, or to use any form of application for employment, or to
36 make an inquiry in connection with prospective employment, which
37 expresses, directly or indirectly, any limitation, specification or
38 discrimination as to race, creed, color, national origin, ancestry,
39 age, marital status, affectional or sexual orientation, disability,
40 nationality or sex or liability of any applicant for employment for
41 service in the Armed Forces of the United States, or activities of the
42 applicant which are not illegal and have no detrimental effect on the
43 ability of the applicant to perform the work for which the
44 application is made, or characteristics or conditions of the applicant
45 which have no detrimental effect on the ability of the applicant to
46 perform the work for which the application is made, or any intent to
47 make any such limitation, specification or discrimination, unless
48 based upon a bona fide occupational qualification.

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1 d. For any person to take reprisals against any person because
2 that person has opposed any practices or acts forbidden under this
3 act or because that person has filed a complaint, testified or assisted
4 in any proceeding under this act or to coerce, intimidate, threaten or
5 interfere with any person in the exercise or enjoyment of, or on
6 account of that person having aided or encouraged any other person
7 in the exercise or enjoyment of, any right granted or protected by
8 this act.

9 e. For any person, whether an employer or an employee or not,
10 to aid, abet, incite, compel or coerce the doing of any of the acts
11 forbidden under this act, or to attempt to do so.

12 f. (1) For any owner, lessee, proprietor, manager,
13 superintendent, agent, or employee of any place of public
14 accommodation directly or indirectly to refuse, withhold from or
15 deny to any person any of the accommodations, advantages,
16 facilities or privileges thereof, or to discriminate against any person
17 in the furnishing thereof, or directly or indirectly to publish,
18 circulate, issue, display, post or mail any written or printed
19 communication, notice, or advertisement to the effect that any of
20 the accommodations, advantages, facilities, or privileges of any
21 such place will be refused, withheld from, or denied to any person
22 on account of the race, creed, color, national origin, ancestry,
23 marital status, sex, affectional or sexual orientation, disability or
24 nationality of such person, or that the patronage or custom thereat
25 of any person of any particular race, creed, color, national origin,
26 ancestry, marital status, sex, affectional or sexual orientation,
27 disability or nationality is unwelcome, objectionable or not
28 acceptable, desired or solicited, and the production of any such
29 written or printed communication, notice or advertisement,
30 purporting to relate to any such place and to be made by any owner,
31 lessee, proprietor, superintendent or manager thereof, shall be
32 presumptive evidence in any action that the same was authorized by
33 such person; provided, however, that nothing contained herein shall
34 be construed to bar any place of public accommodation which is in
35 its nature reasonably restricted exclusively to individuals of one
36 sex, and which shall include but not be limited to any summer
37 camp, day camp, or resort camp, bathhouse, dressing room,
38 swimming pool, gymnasium, comfort station, dispensary, clinic or
39 hospital, or school or educational institution which is restricted
40 exclusively to individuals of one sex, from refusing, withholding
41 from or denying to any individual of the opposite sex any of the
42 accommodations, advantages, facilities or privileges thereof on the
43 basis of sex; provided further, that the foregoing limitation shall not
44 apply to any restaurant as defined in R.S.33:1-1 or place where
45 alcoholic beverages are served.

46 (2) Notwithstanding the definition of "public accommodation "
47 as set forth in subsection l. of section 5 of P.L.1945, c.169 (C.10:5-
48 5), for any owner, lessee, proprietor, manager, superintendent,

1 agent, or employee of any private club or association to directly or
2 indirectly refuse, withhold from or deny to any individual who has
3 been accepted as a club member and has contracted for or is
4 otherwise entitled to full club membership any of the
5 accommodations, advantages, facilities or privileges thereof, or to
6 discriminate against any member in the furnishing thereof on
7 account of the race, creed, color, national origin, ancestry, marital
8 status, sex, affectional or sexual orientation, disability or nationality
9 of such person.

10 In addition to the penalties otherwise provided for a violation of
11 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
12 of subsection f. of this section is the holder of an alcoholic beverage
13 license issued under the provisions of R.S.33:1-12 for that private
14 club or association, the matter shall be referred to the Director of
15 the Division of Alcoholic Beverage Control who shall impose an
16 appropriate penalty in accordance with the procedures set forth in
17 R.S.33:1-31.

18 g. For any person, including but not limited to, any owner,
19 lessee, sublessee, assignee or managing agent of, or other person
20 having the right of ownership or possession of or the right to sell,
21 rent, lease, assign, or sublease any real property or part or portion
22 thereof, or any agent or employee of any of these:

23 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
24 to deny to or withhold from any person or group of persons any real
25 property or part or portion thereof because of race, creed, color,
26 national origin, ancestry, marital status, sex, affectional or sexual
27 orientation, familial status, disability, nationality, or source of
28 lawful income used for rental or mortgage payments;

29 (2) To discriminate against any person or group of persons
30 because of race, creed, color, national origin, ancestry, marital
31 status, sex, affectional or sexual orientation, familial status,
32 disability, nationality or source of lawful income used for rental or
33 mortgage payments in the terms, conditions or privileges of the
34 sale, rental or lease of any real property or part or portion thereof or
35 in the furnishing of facilities or services in connection therewith;

36 (3) To print, publish, circulate, issue, display, post or mail, or
37 cause to be printed, published, circulated, issued, displayed, posted
38 or mailed any statement, advertisement, publication or sign, or to
39 use any form of application for the purchase, rental, lease,
40 assignment or sublease of any real property or part or portion
41 thereof, or to make any record or inquiry in connection with the
42 prospective purchase, rental, lease, assignment, or sublease of any
43 real property, or part or portion thereof which expresses, directly or
44 indirectly, any limitation, specification or discrimination as to race,
45 creed, color, national origin, ancestry, marital status, sex,
46 affectional or sexual orientation, familial status, disability,
47 nationality, or source of lawful income used for rental or mortgage
48 payments, or any intent to make any such limitation, specification

1 or discrimination, and the production of any such statement,
2 advertisement, publicity, sign, form of application, record, or
3 inquiry purporting to be made by any such person shall be
4 presumptive evidence in any action that the same was authorized by
5 such person; provided, however, that nothing contained in this
6 subsection shall be construed to bar any person from refusing to
7 sell, rent, lease, assign or sublease or from advertising or recording
8 a qualification as to sex for any room, apartment, flat in a dwelling
9 or residential facility which is planned exclusively for and occupied
10 by individuals of one sex to any individual of the exclusively
11 opposite sex on the basis of sex;

12 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
13 to deny to or withhold from any person or group of persons any real
14 property or part or portion thereof because of the source of any
15 lawful income received by the person or the source of any lawful
16 rent payment to be paid for the real property; or

17 (5) To refuse to rent or lease any real property to another person
18 because that person's family includes children under 18 years of
19 age, or to make an agreement, rental or lease of any real property
20 which provides that the agreement, rental or lease shall be rendered
21 null and void upon the birth of a child. This paragraph shall not
22 apply to housing for older persons as defined in subsection mm. of
23 section 5 of P.L.1945, c.169 (C.10:5-5).

24 h. For any person, including but not limited to, any real estate
25 broker, real estate salesperson, or employee or agent thereof:

26 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
27 sale, rental, lease, assignment, or sublease any real property or part
28 or portion thereof to any person or group of persons or to refuse to
29 negotiate for the sale, rental, lease, assignment, or sublease of any
30 real property or part or portion thereof to any person or group of
31 persons because of race, creed, color, national origin, ancestry,
32 marital status, familial status, sex, affectional or sexual orientation,
33 disability, nationality, or source of lawful income used for rental or
34 mortgage payments, or to represent that any real property or portion
35 thereof is not available for inspection, sale, rental, lease,
36 assignment, or sublease when in fact it is so available, or otherwise
37 to deny or withhold any real property or any part or portion of
38 facilities thereof to or from any person or group of persons because
39 of race, creed, color, national origin, ancestry, marital status,
40 familial status, sex, affectional or sexual orientation, disability or
41 nationality;

42 (2) To discriminate against any person because of race, creed,
43 color, national origin, ancestry, marital status, familial status, sex,
44 affectional or sexual orientation, disability, nationality, or source of
45 lawful income used for rental or mortgage payments in the terms,
46 conditions or privileges of the sale, rental, lease, assignment or
47 sublease of any real property or part or portion thereof or in the
48 furnishing of facilities or services in connection therewith;

1 (3) To print, publish, circulate, issue, display, post, or mail, or
2 cause to be printed, published, circulated, issued, displayed, posted
3 or mailed any statement, advertisement, publication or sign, or to
4 use any form of application for the purchase, rental, lease,
5 assignment, or sublease of any real property or part or portion
6 thereof or to make any record or inquiry in connection with the
7 prospective purchase, rental, lease, assignment, or sublease of any
8 real property or part or portion thereof which expresses, directly or
9 indirectly, any limitation, specification or discrimination as to race,
10 creed, color, national origin, ancestry, marital status, familial status,
11 sex, affectional or sexual orientation, disability, nationality, or
12 source of lawful income used for rental or mortgage payments or
13 any intent to make any such limitation, specification or
14 discrimination, and the production of any such statement,
15 advertisement, publicity, sign, form of application, record, or
16 inquiry purporting to be made by any such person shall be
17 presumptive evidence in any action that the same was authorized by
18 such person; provided, however, that nothing contained in this
19 subsection h., shall be construed to bar any person from refusing to
20 sell, rent, lease, assign or sublease or from advertising or recording
21 a qualification as to sex for any room, apartment, flat in a dwelling
22 or residential facility which is planned exclusively for and occupied
23 exclusively by individuals of one sex to any individual of the
24 opposite sex on the basis of sex;

25 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
26 to deny to or withhold from any person or group of persons any real
27 property or part or portion thereof because of the source of any
28 lawful income received by the person or the source of any lawful
29 rent payment to be paid for the real property; or

30 (5) To refuse to rent or lease any real property to another person
31 because that person's family includes children under 18 years of
32 age, or to make an agreement, rental or lease of any real property
33 which provides that the agreement, rental or lease shall be rendered
34 null and void upon the birth of a child. This paragraph shall not
35 apply to housing for older persons as defined in subsection mm. of
36 section 5 of P.L.1945, c.169 (C.10:5-5).

37 i. For any person, bank, banking organization, mortgage
38 company, insurance company or other financial institution, lender
39 or credit institution involved in the making or purchasing of any
40 loan or extension of credit, for whatever purpose, whether secured
41 by residential real estate or not, including but not limited to
42 financial assistance for the purchase, acquisition, construction,
43 rehabilitation, repair or maintenance of any real property or part or
44 portion thereof or any agent or employee thereof:

45 (1) To discriminate against any person or group of persons
46 because of race, creed, color, national origin, ancestry, marital
47 status, sex, affectional or sexual orientation, disability, familial
48 status or nationality, in the granting, withholding, extending,

1 modifying, renewing, or purchasing, or in the fixing of the rates,
2 terms, conditions or provisions of any such loan, extension of credit
3 or financial assistance or purchase thereof or in the extension of
4 services in connection therewith;

5 (2) To use any form of application for such loan, extension of
6 credit or financial assistance or to make record or inquiry in
7 connection with applications for any such loan, extension of credit
8 or financial assistance which expresses, directly or indirectly, any
9 limitation, specification or discrimination as to race, creed, color,
10 national origin, ancestry, marital status, sex, affectional or sexual
11 orientation, disability, familial status or nationality or any intent to
12 make any such limitation, specification or discrimination; unless
13 otherwise required by law or regulation to retain or use such
14 information;

15 (3) (Deleted by amendment, P.L.2003, c.180).

16 (4) To discriminate against any person or group of persons
17 because of the source of any lawful income received by the person
18 or the source of any lawful rent payment to be paid for the real
19 property; or

20 (5) To discriminate against any person or group of persons
21 because that person's family includes children under 18 years of
22 age, or to make an agreement or mortgage which provides that the
23 agreement or mortgage shall be rendered null and void upon the
24 birth of a child. This paragraph shall not apply to housing for older
25 persons as defined in subsection mm. of section 5 of P.L.1945,
26 c.169 (C.10:5-5).

27 j. For any person whose activities are included within the
28 scope of this act to refuse to post or display such notices concerning
29 the rights or responsibilities of persons affected by this act as the
30 Attorney General may by regulation require.

31 k. For any real estate broker, real estate salesperson or
32 employee or agent thereof or any other individual, corporation,
33 partnership, or organization, for the purpose of inducing a
34 transaction for the sale or rental of real property from which
35 transaction such person or any of its members may benefit
36 financially, to represent that a change has occurred or will or may
37 occur in the composition with respect to race, creed, color, national
38 origin, ancestry, marital status, familial status, sex, affectional or
39 sexual orientation, disability, nationality, or source of lawful
40 income used for rental or mortgage payments of the owners or
41 occupants in the block, neighborhood or area in which the real
42 property is located, and to represent, directly or indirectly, that this
43 change will or may result in undesirable consequences in the block,
44 neighborhood or area in which the real property is located,
45 including, but not limited to the lowering of property values, an
46 increase in criminal or anti-social behavior, or a decline in the
47 quality of schools or other facilities.

48 l. For any person to refuse to buy from, sell to, lease from or

1 to, license, contract with, or trade with, provide goods, services or
2 information to, or otherwise do business with any other person on
3 the basis of the race, creed, color, national origin, ancestry, age,
4 sex, affectional or sexual orientation, marital status, liability for
5 service in the Armed Forces of the United States, disability,
6 nationality, or source of lawful income used for rental or mortgage
7 payments of such other person or of such other person's spouse,
8 partners, members, stockholders, directors, officers, managers,
9 superintendents, agents, employees, business associates, suppliers,
10 or customers. This subsection shall not prohibit refusals or other
11 actions (1) pertaining to employee-employer collective bargaining,
12 labor disputes, or unfair labor practices, or (2) made or taken in
13 connection with a protest of unlawful discrimination or unlawful
14 employment practices.

15 m. For any person to:

16 (1) Grant or accept any letter of credit or other document which
17 evidences the transfer of funds or credit, or enter into any contract
18 for the exchange of goods or services, where the letter of credit,
19 contract, or other document contains any provisions requiring any
20 person to discriminate against or to certify that he, she or it has not
21 dealt with any other person on the basis of the race, creed, color,
22 national origin, ancestry, age, sex, affectional or sexual orientation,
23 marital status, disability, liability for service in the Armed Forces of
24 the United States, or nationality of such other person or of such
25 other person's spouse, partners, members, stockholders, directors,
26 officers, managers, superintendents, agents, employees, business
27 associates, suppliers, or customers.

28 (2) Refuse to grant or accept any letter of credit or other
29 document which evidences the transfer of funds or credit, or refuse
30 to enter into any contract for the exchange of goods or services, on
31 the ground that it does not contain such a discriminatory provision
32 or certification.

33 The provisions of this subsection shall not apply to any letter of
34 credit, contract, or other document which contains any provision
35 pertaining to employee-employer collective bargaining, a labor
36 dispute or an unfair labor practice, or made in connection with the
37 protest of unlawful discrimination or an unlawful employment
38 practice, if the other provisions of such letter of credit, contract, or
39 other document do not otherwise violate the provisions of this
40 subsection.

41 n. For any person to aid, abet, incite, compel, coerce, or induce
42 the doing of any act forbidden by subsections l. and m. of section
43 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
44 do so. Such prohibited conduct shall include, but not be limited to:

45 (1) Buying from, selling to, leasing from or to, licensing,
46 contracting with, trading with, providing goods, services, or
47 information to, or otherwise doing business with any person
48 because that person does, or agrees or attempts to do, any such act

1 or any act prohibited by this subsection; or
2 (2) Boycotting, commercially blacklisting or refusing to buy
3 from, sell to, lease from or to, license, contract with, provide goods,
4 services or information to, or otherwise do business with any person
5 because that person has not done or refuses to do any such act or
6 any act prohibited by this subsection; provided that this subsection
7 shall not prohibit refusals or other actions either pertaining to
8 employee-employer collective bargaining, labor disputes, or unfair
9 labor practices, or made or taken in connection with a protest of
10 unlawful discrimination or unlawful employment practices.

11 o. For any multiple listing service, real estate brokers'
12 organization or other service, organization or facility related to the
13 business of selling or renting dwellings to deny any person access
14 to or membership or participation in such organization, or to
15 discriminate against such person in the terms or conditions of such
16 access, membership, or participation, on account of race, creed,
17 color, national origin, ancestry, age, marital status, familial status,
18 sex, affectional or sexual orientation, disability or nationality.

19 p. For any employer or employment agency, unless required by
20 law to do so, to make an inquiry regarding any activities,
21 characteristics or conditions of an applicant for employment which
22 have no detrimental effect on the ability of the applicant to perform
23 the work for which the application is made, unless the employer or
24 employment agency is making inquiries regarding whether the
25 applicant has engaged in illegal activities.

26 (cf: P.L.2003, c.180, s.12)

27

28 2. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 This bill makes it a violation of the "Law Against
34 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), for an
35 employer to discriminate against an individual in hiring or
36 employment because of any activity of the individual which is not
37 illegal and has no detrimental effect on work performance, or
38 because of any characteristic or condition of the individual which
39 has no detrimental effect on work performance.

40 The bill also prohibits an employer or employment agency from
41 expressing to an applicant for work any limitation, specification or
42 discrimination against the applicant because of any characteristic,
43 condition or activity of the applicant which is not illegal and has no
44 detrimental effect on the ability to perform the work.

45 Finally, the bill prohibits an employer or employment agency,
46 unless required by law to do so, from making inquiries about any
47 activity, condition or characteristic of an applicant not affecting the
48 applicant's ability to perform the work, except inquiries about

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1 illegal activities.

2 The provisions of the bill are not intended to affect any
3 employer-sponsored health or life insurance plan which charges
4 different rates or amounts of employee contributions or copayments
5 because of employee practices affecting employee health.