

# ASSEMBLY, No. 2292

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 26, 2008

**Sponsored by:**

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Assemblywoman L. GRACE SPENCER**

**District 29 (Essex and Union)**

**Co-Sponsored by:**

**Assemblywoman Quijano and Assemblyman Diegnan**

**SYNOPSIS**

Makes various changes to the "Law Against Discrimination"; repeals section 4 of P.L.1985, c.73.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/6/2009)**

1 AN ACT concerning the "Law Against Discrimination" and revising  
2 various sections of the statutory law.

3

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

6

7 1. Section 3 of P.L.1945, c.169 (C.10:5-3) is amended to read as  
8 follows:

9 3. The Legislature finds and declares that practices of  
10 discrimination against any of its inhabitants, because of race, creed,  
11 color, national origin, ancestry, age, sex, gender identity or  
12 expression, affectional or sexual orientation, marital status, familial  
13 status, liability for service in the Armed Forces of the United States,  
14 disability or nationality, are matters of concern to the government  
15 of the State, and that such discrimination threatens not only the  
16 rights and proper privileges of the inhabitants of the State but  
17 menaces the institutions and foundation of a free democratic State;  
18 provided, however, that nothing in this expression of policy  
19 prevents the making of legitimate distinctions between citizens and  
20 aliens when required by federal law or otherwise necessary to  
21 promote the national interest.

22 The Legislature further declares its opposition to such practices  
23 of discrimination when directed against any person by reason of the  
24 race, creed, color, national origin, ancestry, age, sex, gender  
25 identity or expression, affectional or sexual orientation, marital  
26 status, familial status, liability for service in the Armed Forces of  
27 the United States, disability or nationality of that person or that  
28 person's spouse, partners, members, stockholders, directors,  
29 officers, managers, superintendents, agents, employees, business  
30 associates, suppliers, or customers, in order that the economic  
31 prosperity and general welfare of the inhabitants of the State may  
32 be protected and ensured.

33 The Legislature further finds that because of discrimination,  
34 people suffer personal hardships, and the State suffers a grievous  
35 harm. The personal hardships include: economic loss; time loss;  
36 physical and emotional stress; and in some cases severe emotional  
37 trauma, illness, homelessness or other irreparable harm resulting  
38 from the strain of employment controversies; relocation, search and  
39 moving difficulties; anxiety caused by lack of information,  
40 uncertainty, and resultant planning difficulty; career, education,  
41 family and social disruption; and adjustment problems, which  
42 particularly impact on those protected by this act. Such harms  
43 have, under the common law, given rise to legal remedies, including  
44 compensatory and punitive damages. The Legislature intends that  
45 such damages be available to all persons protected by this act and

**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 that this act shall be liberally construed in combination with other  
2 protections available under the laws of this State.

3 (cf: P.L.2006, c.100, s.2)

4

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

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

9 a. For an employer, because of the race, creed, color, national  
10 origin, ancestry, age, marital status, familial status, civil union  
11 status, domestic partnership status, affectional or sexual orientation,  
12 genetic information, sex, gender identity or expression, disability or  
13 atypical hereditary cellular or blood trait of any individual, or  
14 because of the liability for service in the Armed Forces of the  
15 United States or the nationality of any individual or independent  
16 contractor, or because of the refusal to submit to a genetic test or  
17 make available the results of a genetic test to an employer, to refuse  
18 to hire or employ or to bar or to discharge or require to retire, unless  
19 justified by lawful considerations other than age, from employment  
20 such individual or independent contractor or to discriminate against  
21 such individual or independent contractor in compensation or in  
22 terms, conditions or privileges of employment, or to fail to provide  
23 reasonable accommodations for disability unless to do so would  
24 impose an undue hardship upon the employer, or to fail to provide  
25 reasonable accommodations for pregnancy or pregnancy-related  
26 conditions unless to do so would impose an undue hardship upon  
27 the employer; provided, however, it shall not be an unlawful  
28 employment practice to refuse to accept for employment an  
29 applicant who has received a notice of induction or orders to report  
30 for active duty in the armed forces; provided further that nothing  
31 herein contained shall be construed to bar an employer from  
32 refusing to accept for employment any person on the basis of sex in  
33 those certain circumstances where sex is a bona fide occupational  
34 qualification, reasonably necessary to the normal operation of the  
35 particular business or enterprise; [provided further that nothing  
36 herein contained shall be construed to bar an employer from  
37 refusing to accept for employment or to promote any person over 70  
38 years of age;] provided further that it shall not be an unlawful  
39 employment practice for a club exclusively social or fraternal to use  
40 club membership as a uniform qualification for employment, or for  
41 a religious association or organization to utilize religious affiliation  
42 as a uniform qualification in the employment of clergy, religious  
43 teachers or other employees engaged in the religious activities of  
44 the association or organization, or in following the tenets of its  
45 religion in establishing and utilizing criteria for employment of an  
46 employee; provided further, that it shall not be an unlawful  
47 employment practice to require the retirement of any employee  
48 who, for the two-year period immediately before retirement, is

1 employed in a bona fide executive or a high policy-making position,  
2 if that employee is entitled to an immediate non-forfeitable annual  
3 retirement benefit from a pension, profit sharing, savings or  
4 deferred retirement plan, or any combination of those plans, of the  
5 employer of that employee which equals in the aggregate at least  
6 ~~[\$27,000.00]~~ \$44,000; and provided further that an employer may  
7 restrict employment to citizens of the United States where such  
8 restriction is required by federal law or is otherwise necessary to  
9 protect the national interest.

10 The provisions of subsections a. and b. of section 57 of  
11 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of  
12 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an  
13 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

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

20 For the purposes of this subsection only, the term "independent  
21 contractor" means an individual who provides services pursuant to a  
22 direct contract between the individual and the entity for whom the  
23 individual is performing work.

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

41 c. For any employer or employment agency to print or circulate  
42 or cause to be printed or circulated any statement, advertisement or  
43 publication, or to use any form of application for employment, or to  
44 make an inquiry in connection with prospective employment, which  
45 expresses, directly or indirectly, any limitation, specification or  
46 discrimination as to race, creed, color, national origin, ancestry,  
47 age, marital status, familial status, civil union status, domestic  
48 partnership status, affectional or sexual orientation, gender identity

1 or expression, disability, nationality or sex or liability of any  
2 applicant for employment for service in the Armed Forces of the  
3 United States, or any intent to make any such limitation,  
4 specification or discrimination, unless based upon a bona fide  
5 occupational qualification.

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

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

17 f. (1) For any owner, lessee, proprietor, manager,  
18 superintendent, agent, or employee of any place of public  
19 accommodation directly or indirectly to refuse, withhold from or  
20 deny to any person any of the accommodations, advantages,  
21 facilities or privileges thereof, or fail to provide reasonable  
22 accommodations for disability unless to do so would impose an  
23 undue hardship upon the place of public accommodation, or to  
24 discriminate against any person in the furnishing thereof, or directly  
25 or indirectly to publish, circulate, issue, display, post or mail any  
26 written or printed communication, notice, or advertisement to the  
27 effect that any of the accommodations, advantages, facilities, or  
28 privileges of any such place will be refused, withheld from, or  
29 denied to any person on account of the race, creed, color, national  
30 origin, ancestry, marital status, civil union status, domestic  
31 partnership status, sex, gender identity or expression, affectional or  
32 sexual orientation, disability or nationality of such person, or that  
33 the patronage or custom thereof of any person of any particular race,  
34 creed, color, national origin, ancestry, marital status, civil union  
35 status, domestic partnership status, sex, gender identity or  
36 expression, affectional or sexual orientation, disability or  
37 nationality is unwelcome, objectionable or not acceptable, desired  
38 or solicited, and the production of any such written or printed  
39 communication, notice or advertisement, purporting to relate to any  
40 such place and to be made by any owner, lessee, proprietor,  
41 superintendent or manager thereof, shall be presumptive evidence in  
42 any action that the same was authorized by such person; provided,  
43 however, that nothing contained herein shall be construed to bar any  
44 place of public accommodation which is in its nature reasonably  
45 restricted exclusively to individuals of one sex, and which shall  
46 include but not be limited to any summer camp, day camp, or resort  
47 camp, bathhouse, dressing room, swimming pool, gymnasium,  
48 comfort station, dispensary, clinic or hospital, or school or

1 educational institution which is restricted exclusively to individuals  
2 of one sex, provided individuals shall be admitted based on their  
3 gender identity or expression, from refusing, withholding from or  
4 denying to any individual of the opposite sex any of the  
5 accommodations, advantages, facilities or privileges thereof on the  
6 basis of sex; provided further, that the foregoing limitation shall not  
7 apply to any restaurant as defined in R.S.33:1-1 or place where  
8 alcoholic beverages are served.

9 (2) Notwithstanding the definition of "a place of public  
10 accommodation" as set forth in subsection l. of section 5 of  
11 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,  
12 manager, superintendent, agent, or employee of any private club or  
13 association to directly or indirectly refuse, withhold from or deny to  
14 any individual who has been accepted as a club member and has  
15 contracted for or is otherwise entitled to full club membership any  
16 of the accommodations, advantages, facilities or privileges thereof,  
17 or to discriminate against any member in the furnishing thereof on  
18 account of the race, creed, color, national origin, ancestry, marital  
19 status, civil union status, domestic partnership status, sex, gender  
20 identity, or expression, affectional or sexual orientation, disability  
21 or nationality of such person.

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

30 g. For any person, including but not limited to, any owner,  
31 lessee, sublessee, assignee or managing agent of, or other person  
32 having the right of ownership or possession of or the right to sell,  
33 rent, lease, assign, or sublease any real property or part or portion  
34 thereof, or any agent or employee of any of these:

35 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise  
36 to deny to or withhold from any person or group of persons any real  
37 property or part or portion thereof because of race, creed, color,  
38 national origin, ancestry, marital status, civil union status, domestic  
39 partnership status, sex, gender identity or expression, affectional or  
40 sexual orientation, familial status, disability, nationality, or source  
41 of lawful income used for rental or mortgage payments;

42 (2) To discriminate against any person or group of persons  
43 because of race, creed, color, national origin, ancestry, marital  
44 status, civil union status, domestic partnership status, sex, gender  
45 identity or expression, affectional or sexual orientation, familial  
46 status, disability, nationality or source of lawful income used for  
47 rental or mortgage payments in the terms, conditions or privileges  
48 of the sale, rental or lease of any real property or part or portion

1 thereof or in the furnishing of facilities or services in connection  
2 therewith or to refuse to permit, at the expense of a person with a  
3 disability, reasonable modifications of existing premises occupied  
4 or to be occupied by the person with a disability if such  
5 modifications may be necessary to afford the person full enjoyment  
6 of the premises; or to refuse to make reasonable accommodations in  
7 rules, policies, practices or services when such accommodations  
8 may be necessary to afford a person with a disability full enjoyment  
9 of the premises;

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

36 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise  
37 to deny to or withhold from any person or group of persons any real  
38 property or part or portion thereof because of the source of any  
39 lawful income received by the person or the source of any lawful  
40 rent payment to be paid for the real property; or

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

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

3 (1) To refuse to sell, rent, assign, lease or sublease, or offer for  
4 sale, rental, lease, assignment, or sublease any real property or part  
5 or portion thereof to any person or group of persons or to refuse to  
6 negotiate for the sale, rental, lease, assignment, or sublease of any  
7 real property or part or portion thereof to any person or group of  
8 persons because of race, creed, color, national origin, ancestry,  
9 marital status, civil union status, domestic partnership status,  
10 familial status, sex, gender identity or expression, affectional or  
11 sexual orientation, disability, nationality, or source of lawful  
12 income used for rental or mortgage payments, or to represent that  
13 any real property or portion thereof is not available for inspection,  
14 sale, rental, lease, assignment, or sublease when in fact it is so  
15 available, or otherwise to deny or withhold any real property or any  
16 part or portion of facilities thereof to or from any person or group of  
17 persons because of race, creed, color, national origin, ancestry,  
18 marital status, civil union status, domestic partnership status,  
19 familial status, sex, gender identity or expression, affectional or  
20 sexual orientation, disability or nationality;

21 (2) To discriminate against any person because of race, creed,  
22 color, national origin, ancestry, marital status, civil union status,  
23 domestic partnership status, familial status, sex, gender identity or  
24 expression, affectional or sexual orientation, disability, nationality,  
25 or source of lawful income used for rental or mortgage payments in  
26 the terms, conditions or privileges of the sale, rental, lease,  
27 assignment or sublease of any real property or part or portion  
28 thereof or in the furnishing of facilities or services in connection  
29 therewithor to refuse to permit, at the expense of a person with a  
30 disability, reasonable modifications of existing premises occupied  
31 or to be occupied by the person with a disability if such  
32 modifications may be necessary to afford the person full enjoyment  
33 of the premises; or to refuse to make reasonable accommodations in  
34 rules, policies, practices or services when such accommodations  
35 may be necessary to afford a person with a disability full enjoyment  
36 of the premises;

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

1 nationality, or source of lawful income used for rental or mortgage  
2 payments or any intent to make any such limitation, specification or  
3 discrimination, and the production of any such statement,  
4 advertisement, publicity, sign, form of application, record, or  
5 inquiry purporting to be made by any such person shall be  
6 presumptive evidence in any action that the same was authorized by  
7 such person; provided, however, that nothing contained in this  
8 subsection h., shall be construed to bar any person from refusing to  
9 sell, rent, lease, assign or sublease or from advertising or recording  
10 a qualification as to sex for any room, apartment, flat in a dwelling  
11 or residential facility which is planned exclusively for and occupied  
12 exclusively by individuals of one sex to any individual of the  
13 opposite sex on the basis of sex, provided individuals shall be  
14 qualified based on their gender identity or expression;

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

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

27 i. For any person, bank, banking organization, mortgage  
28 company, insurance company or other financial institution, lender  
29 or credit institution involved in the making or purchasing of any  
30 loan or extension of credit, for whatever purpose, whether secured  
31 by residential real estate or not, including but not limited to  
32 financial assistance for the purchase, acquisition, construction,  
33 rehabilitation, repair or maintenance of any real property or part or  
34 portion thereof or any agent or employee thereof:

35 (1) To discriminate against any person or group of persons  
36 because of race, creed, color, national origin, ancestry, marital  
37 status, civil union status, domestic partnership status, sex, gender  
38 identity or expression, affectional or sexual orientation, disability,  
39 familial status or nationality, in the granting, withholding,  
40 extending, modifying, renewing, or purchasing, or in the fixing of  
41 the rates, terms, conditions or provisions of any such loan,  
42 extension of credit or financial assistance or purchase thereof or in  
43 the extension of services in connection therewith;

44 (2) To use any form of application for such loan, extension of  
45 credit or financial assistance or to make record or inquiry in  
46 connection with applications for any such loan, extension of credit  
47 or financial assistance which expresses, directly or indirectly, any  
48 limitation, specification or discrimination as to race, creed, color,

1 national origin, ancestry, marital status, civil union status, domestic  
2 partnership status, sex, gender identity or expression, affectional or  
3 sexual orientation, disability, familial status or nationality or any  
4 intent to make any such limitation, specification or discrimination;  
5 unless otherwise required by law or regulation to retain or use such  
6 information;

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

8 (4) To discriminate against any person or group of persons  
9 because of the source of any lawful income received by the person  
10 or the source of any lawful rent payment to be paid for the real  
11 property; or

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

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

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

40 l. For any person to refuse to buy from, sell to, lease from or to,  
41 license, contract with, or trade with, provide goods, services or  
42 information to, or otherwise do business with any other person on  
43 the basis of the race, creed, color, national origin, ancestry, age,  
44 sex, gender identity or expression, affectional or sexual orientation,  
45 marital status, civil union status, domestic partnership status,  
46 liability for service in the Armed Forces of the United States,  
47 disability, nationality, or source of lawful income used for rental or  
48 mortgage payments of such other person or of such other person's

1 spouse, partners, members, stockholders, directors, officers,  
2 managers, superintendents, agents, employees, business associates,  
3 suppliers, or customers. This subsection shall not prohibit refusals  
4 or other actions (1) pertaining to employee-employer collective  
5 bargaining, labor disputes, or unfair labor practices, or (2) made or  
6 taken in connection with a protest of unlawful discrimination or  
7 unlawful employment practices.

8 m. For any person to:

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

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

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

35 n. For any person to aid, abet, incite, compel, coerce, or induce  
36 the doing of any act forbidden by subsections l. and m. of section  
37 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to  
38 do so. Such prohibited conduct shall include, but not be limited to:

39 (1) Buying from, selling to, leasing from or to, licensing,  
40 contracting with, trading with, providing goods, services, or  
41 information to, or otherwise doing business with any person  
42 because that person does, or agrees or attempts to do, any such act  
43 or any act prohibited by this subsection; or

44 (2) Boycotting, commercially blacklisting or refusing to buy  
45 from, sell to, lease from or to, license, contract with, provide goods,  
46 services or information to, or otherwise do business with any person  
47 because that person has not done or refuses to do any such act or  
48 any act prohibited by this subsection; provided that this subsection

1 shall not prohibit refusals or other actions either pertaining to  
2 employee-employer collective bargaining, labor disputes, or unfair  
3 labor practices, or made or taken in connection with a protest of  
4 unlawful discrimination or unlawful employment practices.

5 o. For any multiple listing service, real estate brokers'  
6 organization or other service, organization or facility related to the  
7 business of selling or renting dwellings to deny any person access  
8 to or membership or participation in such organization, or to  
9 discriminate against such person in the terms or conditions of such  
10 access, membership, or participation, on account of race, creed,  
11 color, national origin, ancestry, age, marital status, civil union  
12 status, domestic partnership status, familial status, sex, gender  
13 identity or expression, affectional or sexual orientation, disability or  
14 nationality.

15 p. Nothing in the provisions of this section shall affect the  
16 ability of an employer to require employees to adhere to reasonable  
17 workplace appearance, grooming and dress standards not precluded  
18 by other provisions of State or federal law, except that an employer  
19 shall allow an employee to appear, groom and dress consistent with  
20 the employee's gender identity or expression.

21 q. (1) For any employer to impose upon a person as a condition  
22 of obtaining or retaining employment, including opportunities for  
23 promotion, advancement or transfers, any terms or conditions that  
24 would require a person to violate or forego a sincerely held  
25 religious practice or religious observance, including but not limited  
26 to the observance of any particular day or days or any portion  
27 thereof as a Sabbath or other holy day in accordance with the  
28 requirements of the religion or religious belief, unless, after  
29 engaging in a bona fide effort, the employer demonstrates that it is  
30 unable to reasonably accommodate the employee's religious  
31 observance or practice without undue hardship on the conduct of the  
32 employer's business. Notwithstanding any other provision of law to  
33 the contrary, an employee shall not be entitled to premium wages or  
34 premium benefits for work performed during hours to which those  
35 premium wages or premium benefits would ordinarily be  
36 applicable, if the employee is working during those hours only as an  
37 accommodation to his religious requirements. Nothing in this  
38 subsection q. shall be construed as reducing:

39 (a) The number of the hours worked by the employee which are  
40 counted towards the accruing of seniority, pension or other benefits;  
41 or

42 (b) Any premium wages or benefits provided to an employee  
43 pursuant to a collective bargaining agreement.

44 (2) For an employer to refuse to permit an employee to utilize  
45 leave, as provided for in this subsection q., which is solely used to  
46 accommodate the employee's sincerely held religious observance or  
47 practice. Except where it would cause an employer to incur an  
48 undue hardship, no person shall be required to remain at his place

1 of employment during any day or days or portion thereof that, as a  
2 requirement of his religion, he observes as his Sabbath or other holy  
3 day, including a reasonable time prior and subsequent thereto for  
4 travel between his place of employment and his home; provided that  
5 any such absence from work shall, wherever practicable in the  
6 reasonable judgment of the employer, be made up by an equivalent  
7 amount of time and work at some other mutually convenient time,  
8 or shall be charged against any leave with pay ordinarily granted,  
9 other than sick leave, and any such absence not so made up or  
10 charged, may be treated by the employer of that person as leave  
11 taken without pay.

12 (3) (a) For purposes of this subsection q., "undue hardship"  
13 means an accommodation requiring unreasonable expense or  
14 difficulty, unreasonable interference with the safe or efficient  
15 operation of the workplace or a violation of a bona fide seniority  
16 system or a violation of any provision of a bona fide collective  
17 bargaining agreement.

18 (b) In determining whether the accommodation constitutes an  
19 undue hardship, the factors considered shall include:

20 (i) The identifiable cost of the accommodation, including the  
21 costs of loss of productivity and of retaining or hiring employees or  
22 transferring employees from one facility to another, in relation to  
23 the size and operating cost of the employer.

24 (ii) The number of individuals who will need the particular  
25 accommodation for a sincerely held religious observance or  
26 practice.

27 (iii) For an employer with multiple facilities, the degree to which  
28 the geographic separateness or administrative or fiscal relationship  
29 of the facilities will make the accommodation more difficult or  
30 expensive.

31 (c) An accommodation shall be considered to constitute an undue  
32 hardship if it will result in the inability of an employee to perform  
33 the essential functions of the position in which he or she is  
34 employed.

35 (d) (1) The provisions of this subsection q. shall be applicable  
36 only to reasonable accommodations of religious observances and  
37 shall not supersede any definition of undue hardship or standards  
38 for reasonable accommodation of the disabilities of employees.

39 (2) This subsection q. shall not apply where the uniform  
40 application of terms and conditions of attendance to employees is  
41 essential to prevent undue hardship to the employer. The burden of  
42 proof regarding the applicability of this subsection (d) shall be upon  
43 the employer.

44 (cf: P.L.2007, c.325, s.2)

45

46 3. Section 12 of P.L.1945, c.169 (C.10:5-13) is amended to read  
47 as follows:

48 12. a. Any person claiming to be aggrieved by an unlawful

1 employment practice or an unlawful discrimination may, personally  
2 or by an attorney-at-law, make, sign and file with the division a  
3 **[verified]** complaint in writing which shall state the name and  
4 address of the person, employer, labor organization, employment  
5 agency, owner, lessee, proprietor, manager, superintendent, or agent  
6 alleged to have committed the unlawful employment practice or  
7 unlawful discrimination complained of and which shall set forth the  
8 particulars thereof and shall contain such other information as may  
9 be required by the division. Upon receipt of the complaint, the  
10 division shall notify the complainant on a form promulgated by the  
11 director of the division and approved by the Attorney General of the  
12 complainant's rights under this act, including the right to file a  
13 complaint in the Superior Court to be heard before a jury; of the  
14 jurisdictional limitations of the division; and any other provisions of  
15 this act, without interpretation, that may apply to the complaint. The  
16 Commissioner of Labor, the Attorney General, or the Commissioner  
17 of Education may, in like manner, make, sign and file such  
18 complaint. Any employer whose employees, or some of them,  
19 refuse or threaten to refuse to co-operate with the provisions of this  
20 act, may file with the division a **[verified]** complaint asking for  
21 assistance by conciliation or other remedial action.

22 Any complainant may initiate suit in Superior Court under this  
23 act without first filing a complaint with the division or any  
24 municipal office. Upon the application of any party, a jury trial  
25 shall be directed to try the validity of any claim under this act  
26 specified in the suit. All remedies available in common law tort  
27 actions shall be available to prevailing plaintiffs. These remedies  
28 are in addition to any provided by this act or any other statute.  
29 Prosecution of such suit in Superior Court under this act shall bar  
30 the filing of a complaint with the division or any municipal office  
31 during the pendency of any such suit.

32 b. If a complaint in Superior Court is filed, the complainant shall  
33 withdraw any complaint that he has filed with the Division of Civil  
34 Rights.

35 c. At any time after 180 days from the filing of a complaint with  
36 the division, a complainant may file a request with the division to  
37 present the action personally or through counsel to the Office of  
38 Administrative Law. Upon such request, the director of the division  
39 shall file the action with the Office of Administrative Law,  
40 provided that no action may be filed with the Office of  
41 Administrative Law where the director of the division has found  
42 that no probable cause exists to credit the allegations of the  
43 complaint or has otherwise dismissed the complaint.

44 d. A party to an action based upon a violation of this act shall  
45 mail a copy of the initial pleadings or claims, amended pleadings or  
46 claims, counterclaims, briefs, and legal memoranda to the division  
47 at the same time as filing such documents with the Office of  
48 Administrative Law or the court. Upon application to the Office of

1 Administrative Law or to the court wherein the matter is pending,  
2 the division shall be permitted to intervene.

3 e. The Attorney General or director may initiate suit in Superior  
4 Court under this act without first filing a complaint with the  
5 division. In addition to the injunctive relief set forth in section 16  
6 of P.L.1945, c.169 (C.10:5-17), the Attorney General may seek and  
7 obtain in such Superior Court action, penalties payable to the State  
8 in the amounts set forth in section 2 of P.L.1983, c.412 (C.10:5-  
9 14.1a), where the Superior Court finds unlawful discrimination. In  
10 the alternative, in lieu of penalties, the Attorney General may seek  
11 and obtain punitive damages payable to the State, where unlawful  
12 discrimination has been found and the provisions and standards of  
13 the "Punitive Damages Act," P.L.1995, c.142 (C.2A:15-5.9 et seq.)  
14 are satisfied.  
15 (cf: P.L.1990, c.12, s.2)

16  
17 4. Section 15 of P.L.1945, c.169 (C.10:5-16) is amended to read  
18 as follows:

19 15. a. When the director has issued a finding of probable cause,  
20 the case in support of the complaint shall be presented before the  
21 director by the attorney for the division and evidence concerning  
22 attempted conciliation shall not be received. The respondent shall  
23 file a written **[verified]** answer to the complaint and appear at such  
24 hearing in person or by representative, with or without counsel, and  
25 submit testimony. The complainant shall be allowed to intervene  
26 and present testimony in person and may be represented by counsel.  
27 The director or the complainant shall have the power reasonably  
28 and fairly to amend any complaint, and the respondent shall have  
29 like power to amend his answer. The director shall not be bound by  
30 the strict rules of evidence prevailing in civil actions in courts of  
31 competent jurisdiction of this State. The testimony taken at the  
32 hearing shall be under oath and a verbatim record shall be made.

33 b. When the director has issued a finding of probable cause in a  
34 housing discrimination complaint only, any party to that complaint  
35 may elect, in lieu of the administrative proceeding set forth in this  
36 section, to have the claim asserted in the finding of probable cause  
37 adjudicated in a civil action in Superior Court pursuant to section  
38 12 of P.L.1945, c.169 (C.10:5-13). Such an election shall be made  
39 not later than 20 days after receipt of the finding of probable cause.  
40 Upon such election, the attorney for the division shall promptly file  
41 such an action in Superior Court. Upon application to the court  
42 wherein the matter is pending, the complainant shall be permitted to  
43 intervene and present testimony in person and may be represented  
44 by counsel.

45 (cf: P.L.2003, c.180, s.15)

46  
47 5. (New section) Attorney General, privileged communication.  
48 Where the Attorney General brings an action, either

1 administratively pursuant to section 17 of P.L.1945, c.169 (C.10:5-  
2 16) or in Superior Court pursuant to section 12 of P.L.1945, c.169  
3 (C.10:5-13), which seeks relief for an individual who claims to be a  
4 victim of unlawful discrimination, communications between  
5 members of the Attorney General's office and such individual are  
6 privileged as would be a communication between an attorney and a  
7 client.

8  
9 6. (New section) It shall be an unlawful employment practice  
10 for an employer, as a condition of employment or a condition of  
11 continued employment, to require an employee to waive his right  
12 to a trial by jury, or to change a statute of limitation which would  
13 otherwise be applicable or for an employee to waive any rights  
14 under this act as a condition of employment or continued  
15 employment.

16  
17 7. (New section) a. It is an unlawful employment practice for  
18 an employer to adopt or enforce a policy that limits or prohibits the  
19 use of any language in any workplace, unless both of the following  
20 conditions exist:

21 (1) the language restriction is justified by a business necessity;  
22 and

23 (2) the employer has notified its employees of the circumstances  
24 and the time when the language restriction is required to be  
25 observed and of the consequences for violating the language  
26 restriction.

27 b. For the purposes of this section, "business necessity" means  
28 an overriding legitimate business purpose such that the language  
29 restriction is necessary to the safe and efficient operation of the  
30 business, that the language restriction effectively fulfills the  
31 business purpose it is supposed to serve, and there is no alternative  
32 practice to the language restriction that would accomplish the  
33 business purpose equally well with a lesser discriminatory impact.

34  
35 8. Section 4 of P.L.1985, c.73 (C.10:5-2.2) is repealed.

36  
37 9. (New section) The Attorney General, acting in consultation  
38 with the Director of the Division of Civil Rights and in accordance  
39 with the provisions of the "Administrative Procedure Act,"  
40 P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate guidelines to  
41 assist employers in adopting written employment policies  
42 prohibiting discrimination on the basis of pregnancy pursuant to the  
43 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

44  
45 10. This act shall take effect immediately.

## STATEMENT

1  
2  
3 This bill would make various changes to the "Law Against  
4 Discrimination," set out in N.J.S.A.10:5-1 et seq.

5 Section 1 of the bill amends the second paragraph of  
6 N.J.S.A.10:5-3, which sets out legislative findings and declarations,  
7 to add a declaration concerning the Legislature's opposition to  
8 discrimination on the grounds of "familial status."

9 Section 2 makes several changes to N.J.S.A.10:5-12. This  
10 section of the bill provides that it would constitute an unlawful  
11 employment practice for an employer to refuse to hire or to  
12 discharge an employee on the basis of familial status; for a labor  
13 organization to exclude or expel an individual from membership on  
14 the basis of familial status, and for an employer or employment  
15 agency to print or circulate a statement, advertisement or  
16 publication which expresses discrimination on the grounds of  
17 familial status.

18 Section 2 of the bill includes references to "independent  
19 contractor" within subsection a. of N.J.S.A. 10:5-12 concerning  
20 unlawful employment practice or unlawful discrimination to  
21 provide that for the purposes of subsection a. only, the term  
22 "independent contractor" means an individual who provides  
23 services pursuant to a direct contract between the individual and the  
24 entity for whom the individual is performing work.

25 N.J.S.A.10:5-12 would also be amended to provide that it would  
26 be an unlawful employment practice to fail to provide reasonable  
27 accommodations for disability unless to do so would impose an  
28 undue hardship upon the employer, or to fail to provide reasonable  
29 accommodations for pregnancy or pregnancy-related conditions  
30 unless to do so would impose an undue hardship upon the employer.  
31 The bill also amends N.J.S.A.10:5-12 to provide that it would be  
32 unlawful employment practice to refuse to permit, at the expense of  
33 a person with a disability, reasonable modifications of existing  
34 premises occupied or to be occupied by the person with a disability  
35 if such modifications may be necessary to afford the person full  
36 enjoyment of the premises; or to refuse to make reasonable  
37 accommodations in rules, policies, practices or services when such  
38 accommodations may be necessary to afford a person with a  
39 disability full enjoyment of the premise.

40 Section 2 of the bill also removes obsolete language from  
41 subsection a. of N.J.S.A.10:5-12 that currently allows an employer  
42 to refuse to hire or promote a person over age 70. Such refusal  
43 would violate federal law; in 1986, Congress amended the federal  
44 "Age Discrimination in Employment Act," 29 U.S.C.A.623 et seq.,  
45 to eliminate the statute's upper age cap of 70.

46 In addition, section 2 of the bill increases the monetary amount  
47 of \$27,000 currently set out in subsection a. of N.J.S.A.10:5-12 to  
48 \$44,000 in compliance with 1984 amendments to the federal "Age

1 Discrimination in Employment Act." Under the provisions of 29  
2 U.S.C.A. 631, an employer may provide for the compulsory  
3 retirement of an employee who is at least age 65 and is employed in  
4 a bona fide executive or high policy making position if the  
5 employee is entitled to a retirement benefit of at least \$44,000.  
6 Subsection a. of N.J.S.A.10:5-12 sets out similar language.

7 Section 3 of the bill amends N.J.S.A.10:5-13 to remove the  
8 requirement that a person claiming to be aggrieved by an unlawful  
9 employment practice or an unlawful discrimination file a verified  
10 complaint; the complaint need not be verified. Section 3 also  
11 provides that if a person who files a complaint with the Superior  
12 Court has previously filed a complaint with the Division of Civil  
13 Rights, he must withdraw the complaint he has filed with the  
14 Division.

15 In addition, section 3 provides that the Attorney General or the  
16 Director of the Division of Civil Rights may initiate suit under the  
17 LAD without first filing a complaint with the Division of Civil  
18 Rights. The Attorney General would also be authorized to seek and  
19 obtain penalties payable to the State where the Superior Court finds  
20 unlawful discrimination. The bill provides that, in lieu of penalties,  
21 the Attorney General may seek and obtain punitive damages  
22 payable to the State, where unlawful discrimination has been found  
23 and the provisions and standards of the "Punitive Damages Act,"  
24 N.J.S.A.2A:15-5.9 et seq., are satisfied.

25 Section 4 of the bill removes the requirement that the answer  
26 filed by the respondent to a complaint must be verified.

27 Section 5 provides that when the Attorney General brings an  
28 action under the LAD which seeks relief for an individual who  
29 claims to be a victim of unlawful discrimination, communications  
30 between members of the Attorney General's office and such  
31 individual would be privileged as would be a communication  
32 between an attorney and a client.

33 Section 6 provides that it would be an unlawful employment  
34 practice for an employer, as a condition of employment or a  
35 condition of continued employment, to require an employee to  
36 waive his right to a trial by jury, or to change a statute of limitation  
37 which would otherwise be applicable or for an employee to waive  
38 any rights under the LAD as a condition of employment or  
39 continued employment.

40 Section 7 of the bill would prohibit "English-only" rules in the  
41 workplace under certain circumstances. The Appellate Division has  
42 ruled that it is not a violation of the LAD for an employer to  
43 implement a rule that employees speak only English on the job and  
44 to fire an employee who speaks another language to a co-worker.  
45 (See Rosario v. Cacace, 337 N.J. Super. 578 (App. Div. 2001).)  
46 Under the bill, it would be an unlawful employment practice for an  
47 employer to adopt or enforce a policy that limits or prohibits the use

1 of any language in any workplace, unless both of the following  
2 conditions exist:

3 (1) the language restriction is justified by a business necessity;  
4 and

5 (2) the employer has notified its employees of the circumstances  
6 and the time when the language restriction is required to be  
7 observed and of the consequences for violating the language  
8 restriction.

9 The bill defines "business necessity" as an overriding legitimate  
10 business purpose such that the language restriction is necessary to  
11 the safe and efficient operation of the business, that the language  
12 restriction effectively fulfills the business purpose it is supposed to  
13 serve, and there is no alternative practice to the language  
14 restrictions that would accomplish the business purpose equally  
15 well with a lesser discriminatory impact."

16 Section 8 of the bill would repeal N.J.S.A.10:5-2.2, which, like  
17 N.J.S.A.10:5-12, contains obsolete language allowing the forced  
18 retirement of an employee of an institution of higher education at  
19 age 70. The federal "Age Discrimination in Employment Act" also  
20 prohibits the forced retirement of higher education employees.

21 Section 9 of the bill would provide that the Attorney General,  
22 acting in consultation with the Director of the Division of Civil  
23 Rights, shall promulgate guidelines to assist employers in adopting  
24 written employment policies prohibiting discrimination on the basis  
25 of pregnancy pursuant to the "Law Against Discrimination."