

ASSEMBLY, No. 2866

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 22, 2008

Sponsored by:

Assemblyman JAY WEBBER

District 26 (Morris and Passaic)

Assemblywoman ALISON LITTELL MCHOSE

District 24 (Sussex, Hunterdon and Morris)

Assemblyman GARY R. CHIUSANO

District 24 (Sussex, Hunterdon and Morris)

SYNOPSIS

Clarifies right of employers to require employees to speak English while engaged in work.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the protection of employers seeking a unified
2 language in the workplace 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
8 read 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, civil union status, domestic
13 partnership status, affectional or sexual orientation, genetic
14 information, sex, gender identity or expression, disability or
15 atypical hereditary cellular or blood trait of any individual, or
16 because of the liability for service in the Armed Forces of the
17 United States or the nationality of any individual, or because of the
18 refusal to submit to a genetic test or make available the results of a
19 genetic test to an employer, to refuse to hire or employ or to bar or
20 to discharge or require to retire, unless justified by lawful
21 considerations other than age, from employment such individual or
22 to discriminate against such individual in compensation or in terms,
23 conditions or privileges of employment; provided, however, it shall
24 not be an unlawful employment practice to refuse to accept for
25 employment an applicant who has received a notice of induction or
26 orders to report for active duty in the armed forces; provided further
27 that nothing herein contained shall be construed to bar an employer
28 from refusing to accept for employment any person on the basis of
29 sex in those certain circumstances where sex is a bona fide
30 occupational qualification, reasonably necessary to the normal
31 operation of the particular business or enterprise; provided further
32 that nothing herein contained shall be construed to bar an employer
33 from refusing to accept for employment or to promote any person
34 over 70 years of age; provided further that it shall not be an
35 unlawful employment practice for a club exclusively social or
36 fraternal to use club membership as a uniform qualification for
37 employment, or for a religious association or organization to utilize
38 religious affiliation as a uniform qualification in the employment of
39 clergy, religious teachers or other employees engaged in the
40 religious activities of the association or organization, or in
41 following the tenets of its religion in establishing and utilizing
42 criteria for employment of an employee; provided further, that it
43 shall not be an unlawful employment practice to require the
44 retirement of any employee who, for the two-year period
45 immediately before retirement, is employed in a bona fide executive

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 or a high policy-making position, if that employee is entitled to an
2 immediate non-forfeitable annual retirement benefit from a pension,
3 profit sharing, savings or deferred retirement plan, or any
4 combination of those plans, of the employer of that employee which
5 equals in the aggregate at least \$27,000.00; **[and]** provided further
6 that an employer may restrict employment to citizens of the United
7 States where such restriction is required by federal law or is
8 otherwise necessary to protect the national interest; and provided
9 further that it shall not be an unlawful employment practice for an
10 employer to require an employee to speak, or an applicant for
11 employment to agree to speak, English while performing duties
12 falling within the scope of the employee's employment, regardless
13 of whether speaking English is necessary to perform the essential
14 functions of the employee's job, though an employee shall not be
15 regarded as performing duties falling within the scope of the
16 employee's employment during a bona fide meal period, rest period,
17 or other break authorized by the employer.

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

22 For the purposes of this subsection, a "bona fide executive" is a
23 top level employee who exercises substantial executive authority
24 over a significant number of employees and a large volume of
25 business. A "high policy-making position" is a position in which a
26 person plays a significant role in developing policy and in
27 recommending the implementation thereof.

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

44 c. For any employer or employment agency to print or circulate
45 or cause to be printed or circulated any statement, advertisement or
46 publication, or to use any form of application for employment, or to
47 make an inquiry in connection with prospective employment, which
48 expresses, directly or indirectly, any limitation, specification or

1 discrimination as to race, creed, color, national origin, ancestry,
2 age, marital status, civil union status, domestic partnership status,
3 affectional or sexual orientation, gender identity or expression,
4 disability, nationality or sex or liability of any applicant for
5 employment for service in the Armed Forces of the United States,
6 or any intent to make any such limitation, specification or
7 discrimination, unless based upon a bona fide occupational
8 qualification.

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

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

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

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

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

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

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

36 (1) 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 race, creed, color,
39 national origin, ancestry, marital status, civil union status, domestic
40 partnership status, sex, gender identity or expression, affectional or
41 sexual orientation, familial status, disability, nationality, or source
42 of lawful income used for rental or mortgage payments;

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

1 of the sale, rental or lease of any real property or part or portion
2 thereof or in the furnishing of facilities or services in connection
3 therewith;

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

30 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
31 to deny to or withhold from any person or group of persons any real
32 property or part or portion thereof because of the source of any
33 lawful income received by the person or the source of any lawful
34 rent payment to be paid for the real property; or

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

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

44 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
45 sale, rental, lease, assignment, or sublease any real property or part
46 or portion thereof to any person or group of persons or to refuse to
47 negotiate for the sale, rental, lease, assignment, or sublease of any
48 real property or part or portion thereof to any person or group of

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

14 (2) To discriminate against any person because of race, creed,
15 color, national origin, ancestry, marital status, civil union status,
16 domestic partnership status, familial status, sex, gender identity or
17 expression, affectional or sexual orientation, disability, nationality,
18 or source of lawful income used for rental or mortgage payments in
19 the terms, conditions or privileges of the sale, rental, lease,
20 assignment or sublease of any real property or part or portion
21 thereof or in the furnishing of facilities or services in connection
22 therewith;

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

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

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

13 i. For any person, bank, banking organization, mortgage
14 company, insurance company or other financial institution, lender
15 or credit institution involved in the making or purchasing of any
16 loan or extension of credit, for whatever purpose, whether secured
17 by residential real estate or not, including but not limited to
18 financial assistance for the purchase, acquisition, construction,
19 rehabilitation, repair or maintenance of any real property or part or
20 portion thereof or any agent or employee thereof:

21 (1) To discriminate against any person or group of persons
22 because of race, creed, color, national origin, ancestry, marital
23 status, civil union status, domestic partnership status, sex, gender
24 identity or expression, affectional or sexual orientation, disability,
25 familial status or nationality, in the granting, withholding,
26 extending, modifying, renewing, or purchasing, or in the fixing of
27 the rates, terms, conditions or provisions of any such loan,
28 extension of credit or financial assistance or purchase thereof or in
29 the extension of services in connection therewith;

30 (2) To use any form of application for such loan, extension of
31 credit or financial assistance or to make record or inquiry in
32 connection with applications for any such loan, extension of credit
33 or financial assistance which expresses, directly or indirectly, any
34 limitation, specification or discrimination as to race, creed, color,
35 national origin, ancestry, marital status, civil union status, domestic
36 partnership status, sex, gender identity or expression, affectional or
37 sexual orientation, disability, familial status or nationality or any
38 intent to make any such limitation, specification or discrimination;
39 unless otherwise required by law or regulation to retain or use such
40 information;

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

42 (4) To discriminate against any person or group of persons
43 because of the source of any lawful income received by the person
44 or the source of any lawful rent payment to be paid for the real
45 property; or

46 (5) To discriminate against any person or group of persons
47 because that person's family includes children under 18 years of
48 age, or to make an agreement or mortgage which provides that the

1 agreement or mortgage shall be rendered null and void upon the
2 birth of a child. This paragraph shall not apply to housing for older
3 persons as defined in subsection mm. of section 5 of P.L.1945,
4 c.169 (C.10:5-5).

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

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

27 l. For any person to refuse to buy from, sell to, lease from or
28 to, license, contract with, or trade with, provide goods, services or
29 information to, or otherwise do business with any other person on
30 the basis of the race, creed, color, national origin, ancestry, age,
31 sex, gender identity or expression, affectional or sexual orientation,
32 marital status, civil union status, domestic partnership status,
33 liability for service in the Armed Forces of the United States,
34 disability, nationality, or source of lawful income used for rental or
35 mortgage payments of such other person or of such other person's
36 spouse, partners, members, stockholders, directors, officers,
37 managers, superintendents, agents, employees, business associates,
38 suppliers, or customers. This subsection shall not prohibit refusals
39 or other actions (1) pertaining to employee-employer collective
40 bargaining, labor disputes, or unfair labor practices, or (2) made or
41 taken in connection with a protest of unlawful discrimination or
42 unlawful employment practices.

43 m. For any person to:

44 (1) Grant or accept any letter of credit or other document which
45 evidences the transfer of funds or credit, or enter into any contract
46 for the exchange of goods or services, where the letter of credit,
47 contract, or other document contains any provisions requiring any
48 person to discriminate against or to certify that he, she or it has not

1 dealt with any other person on the basis of the race, creed, color,
2 national origin, ancestry, age, sex, gender identity or expression,
3 affectional or sexual orientation, marital status, civil union status,
4 domestic partnership status, disability, liability for service in the
5 Armed Forces of the United States, or nationality of such other
6 person or of such other person's spouse, partners, members,
7 stockholders, directors, officers, managers, superintendents, agents,
8 employees, business associates, suppliers, or customers.

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

14 The provisions of this subsection shall not apply to any letter of
15 credit, contract, or other document which contains any provision
16 pertaining to employee-employer collective bargaining, a labor
17 dispute or an unfair labor practice, or made in connection with the
18 protest of unlawful discrimination or an unlawful employment
19 practice, if the other provisions of such letter of credit, contract, or
20 other document do not otherwise violate the provisions of this
21 subsection.

22 n. For any person to aid, abet, incite, compel, coerce, or induce
23 the doing of any act forbidden by subsections l. and m. of section
24 **【11 of P.L.1945, c.169 (C.10:5-12)】**, or to attempt, or to conspire to
25 do so. Such prohibited conduct shall include, but not be limited to:

26 (1) Buying from, selling to, leasing from or to, licensing,
27 contracting with, trading with, providing goods, services, or
28 information to, or otherwise doing business with any person
29 because that person does, or agrees or attempts to do, any such act
30 or any act prohibited by this subsection; or

31 (2) Boycotting, commercially blacklisting or refusing to buy
32 from, sell to, lease from or to, license, contract with, provide goods,
33 services or information to, or otherwise do business with any person
34 because that person has not done or refuses to do any such act or
35 any act prohibited by this subsection; provided that this subsection
36 shall not prohibit refusals or other actions either pertaining to
37 employee-employer collective bargaining, labor disputes, or unfair
38 labor practices, or made or taken in connection with a protest of
39 unlawful discrimination or unlawful employment practices.

40 o. For any multiple listing service, real estate brokers'
41 organization or other service, organization or facility related to the
42 business of selling or renting dwellings to deny any person access
43 to or membership or participation in such organization, or to
44 discriminate against such person in the terms or conditions of such
45 access, membership, or participation, on account of race, creed,
46 color, national origin, ancestry, age, marital status, civil union
47 status, domestic partnership status, familial status, sex, gender

1 identity or expression, affectional or sexual orientation, disability or
2 nationality.

3 p. Nothing in the provisions of this section shall affect the
4 ability of an employer to require employees to adhere to reasonable
5 workplace appearance, grooming and dress standards not precluded
6 by other provisions of State or federal law, except that an employer
7 shall allow an employee to appear, groom and dress consistent with
8 the employee's gender identity or expression.

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

27 (a) The number of the hours worked by the employee which are
28 counted towards the accruing of seniority, pension or other benefits;
29 or

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

32 (2) For an employer to refuse to permit an employee to utilize
33 leave, as provided for in this subsection q., which is solely used to
34 accommodate the employee's sincerely held religious observance or
35 practice. Except where it would cause an employer to incur an
36 undue hardship, no person shall be required to remain at his place
37 of employment during any day or days or portion thereof that, as a
38 requirement of his religion, he observes as his Sabbath or other holy
39 day, including a reasonable time prior and subsequent thereto for
40 travel between his place of employment and his home; provided that
41 any such absence from work shall, wherever practicable in the
42 reasonable judgment of the employer, be made up by an equivalent
43 amount of time and work at some other mutually convenient time,
44 or shall be charged against any leave with pay ordinarily granted,
45 other than sick leave, and any such absence not so made up or
46 charged, may be treated by the employer of that person as leave
47 taken without pay.

1 (3) (a) For purposes of this subsection q., "undue hardship"
2 means an accommodation requiring unreasonable expense or
3 difficulty, unreasonable interference with the safe or efficient
4 operation of the workplace or a violation of a bona fide seniority
5 system or a violation of any provision of a bona fide collective
6 bargaining agreement.

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

9 (i) The identifiable cost of the accommodation, including the
10 costs of loss of productivity and of retaining or hiring employees or
11 transferring employees from one facility to another, in relation to
12 the size and operating cost of the employer.

13 (ii) The number of individuals who will need the particular
14 accommodation for a sincerely held religious observance or
15 practice.

16 (iii) For an employer with multiple facilities, the degree to which
17 the geographic separateness or administrative or fiscal relationship
18 of the facilities will make the accommodation more difficult or
19 expensive.

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

24 (d) (i) The provisions of this subsection q. shall be applicable
25 only to reasonable accommodations of religious observances and
26 shall not supersede any definition of undue hardship or standards
27 for reasonable accommodation of the disabilities of employees.

28 (ii) This subsection q. shall not apply where the uniform
29 application of terms and conditions of attendance to employees is
30 essential to prevent undue hardship to the employer. The burden of
31 proof regarding the applicability of this subparagraph (d) shall be
32 upon the employer.

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

34

35 2. This act shall take effect immediately.

36

37

38

STATEMENT

39

40 This bill amends the "Law Against Discrimination," P.L.1945,
41 c.169 (C.10:5-1 et seq.) to expressly provide that it shall not be an
42 unlawful employment practice for an employer to require an
43 employee to speak, or an applicant for employment to agree to
44 speak, English while engaged in work. For the purposes of the bill,
45 an employee is not be regarded as being engaged in work during a
46 bona fide meal period, rest period or other break, during which the
47 employee is not required by the employer to perform any duties.

A2866 WEBBER, MCHOSE

13

1 The purpose of the bill is to protect the State's employers from
2 the burden of frivolous lawsuits, enhance the smooth and efficient
3 operation of workplaces in the State, and recognize and promote
4 English as the common unifying language in the State's commerce.