

SENATE, No. 3813

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 30, 2019

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Expands “Law Against Discrimination” to apply to health programs and activities and to prohibit discrimination based on association with individuals in protected classes.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning discrimination and amending P.L.1945, c.169.

2

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

5

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

8 5. As used in P.L.1945, c.169 (C.10:5-1 et seq.), unless a
9 different meaning clearly appears from the context:

10 a. "Person" includes one or more individuals, partnerships,
11 associations, organizations, labor organizations, corporations, legal
12 representatives, trustees, trustees in bankruptcy, receivers, and
13 fiduciaries.

14 b. "Employment agency" includes any person undertaking to
15 procure employees or opportunities for others to work.

16 c. "Labor organization" includes any organization which exists
17 and is constituted for the purpose, in whole or in part, of collective
18 bargaining, or of dealing with employers concerning grievances,
19 terms or conditions of employment, or of other mutual aid or
20 protection in connection with employment.

21 d. "Unlawful employment practice" and "unlawful
22 discrimination" include only those unlawful practices and acts
23 specified in section 11 of P.L.1945, c.169 (C.10:5-12).

24 e. "Employer" includes all persons as defined in subsection a.
25 of this section unless otherwise specifically exempt under another
26 section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State,
27 any political or civil subdivision thereof, and all public officers,
28 agencies, boards, or bodies.

29 f. "Employee" does not include any individual employed in the
30 domestic service of any person.

31 g. "Liability for service in the Armed Forces of the United
32 States" means subject to being ordered as an individual or member
33 of an organized unit into active service in the Armed Forces of the
34 United States by reason of membership in the National Guard, naval
35 militia or a reserve component of the Armed Forces of the United
36 States, or subject to being inducted into such armed forces through
37 a system of national selective service.

38 h. "Division" means the "Division on Civil Rights" created by
39 P.L.1945, c.169 (C.10:5-1 et seq.).

40 i. "Attorney General" means the Attorney General of the State
41 of New Jersey or the Attorney General's representative or designee.

42 j. "Commission" means the Commission on Civil Rights
43 created by P.L.1945, c.169 (C.10:5-1 et seq.).

44 k. "Director" means the Director of the Division on Civil
45 Rights.

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 1. "A place of public accommodation" shall include, but not be
2 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
3 summer camp, day camp, or resort camp, whether for entertainment
4 of transient guests or accommodation of those seeking health,
5 recreation, or rest; any producer, manufacturer, wholesaler,
6 distributor, retail shop, store, establishment, or concession dealing
7 with goods or services of any kind; any restaurant, eating house, or
8 place where food is sold for consumption on the premises; any
9 place maintained for the sale of ice cream, ice and fruit preparations
10 or their derivatives, soda water or confections, or where any
11 beverages of any kind are retailed for consumption on the premises;
12 any garage, any public conveyance operated on land or water or in
13 the air or any stations and terminals thereof; any bathhouse,
14 boardwalk, or seashore accommodation; any auditorium, meeting
15 place, or hall; any theatre, motion-picture house, music hall, roof
16 garden, skating rink, swimming pool, amusement and recreation
17 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
18 pool parlor, or other place of amusement; any comfort station; any
19 dispensary, clinic, or hospital; any public library; and any
20 kindergarten, primary and secondary school, trade or business
21 school, high school, academy, college and university, or any
22 educational institution under the supervision of the State Board of
23 Education or the Commissioner of Education of the State of New
24 Jersey. Nothing herein contained shall be construed to include or to
25 apply to any institution, bona fide club, or place of accommodation,
26 which is in its nature distinctly private; nor shall anything herein
27 contained apply to any educational facility operated or maintained
28 by a bona fide religious or sectarian institution, and the right of a
29 natural parent or one in loco parentis to direct the education and
30 upbringing of a child under his control is hereby affirmed; nor shall
31 anything herein contained be construed to bar any private secondary
32 or post-secondary school from using in good faith criteria other than
33 race, creed, color, national origin, ancestry, gender identity, or
34 expression or affectional or sexual orientation in the admission of
35 students.

36 m. "A publicly assisted housing accommodation" shall include
37 all housing built with public funds or public assistance pursuant to
38 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
39 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
40 c.184, and all housing financed in whole or in part by a loan,
41 whether or not secured by a mortgage, the repayment of which is
42 guaranteed or insured by the federal government or any agency
43 thereof.

44 n. The term "real property" includes real estate, lands,
45 tenements and hereditaments, corporeal and incorporeal, and
46 leaseholds, provided, however, that, except as to publicly assisted
47 housing accommodations, the provisions of this act shall not apply
48 to the rental: (1) of a single apartment or flat in a two-family

1 dwelling, the other occupancy unit of which is occupied by the
2 owner as a residence; or (2) of a room or rooms to another person or
3 persons by the owner or occupant of a one-family dwelling
4 occupied by the owner or occupant as a residence at the time of
5 such rental. Nothing herein contained shall be construed to bar any
6 religious or denominational institution or organization, or any
7 organization operated for charitable or educational purposes, which
8 is operated, supervised, or controlled by or in connection with a
9 religious organization, in the sale, lease, or rental of real property,
10 from limiting admission to or giving preference to persons of the
11 same religion or denomination or from making such selection as is
12 calculated by such organization to promote the religious principles
13 for which it is established or maintained. Nor does any provision
14 under this act regarding discrimination on the basis of familial
15 status apply with respect to housing for older persons.

16 o. "Real estate broker" includes a person, firm, or corporation
17 who, for a fee, commission, or other valuable consideration, or by
18 reason of promise or reasonable expectation thereof, lists for sale,
19 sells, exchanges, buys or rents, or offers or attempts to negotiate a
20 sale, exchange, purchase, or rental of real estate or an interest
21 therein, or collects or offers or attempts to collect rent for the use of
22 real estate, or solicits for prospective purchasers or assists or directs
23 in the procuring of prospects or the negotiation or closing of any
24 transaction which does or is contemplated to result in the sale,
25 exchange, leasing, renting, or auctioning of any real estate, or
26 negotiates, or offers or attempts or agrees to negotiate a loan
27 secured or to be secured by mortgage or other encumbrance upon or
28 transfer of any real estate for others; or any person who, for
29 pecuniary gain or expectation of pecuniary gain conducts a public
30 or private competitive sale of lands or any interest in lands. In the
31 sale of lots, the term "real estate broker" shall also include any
32 person, partnership, association, or corporation employed by or on
33 behalf of the owner or owners of lots or other parcels of real estate,
34 at a stated salary, or upon a commission, or upon a salary and
35 commission or otherwise, to sell such real estate, or any parts
36 thereof, in lots or other parcels, and who shall sell or exchange, or
37 offer or attempt or agree to negotiate the sale or exchange, of any
38 such lot or parcel of real estate.

39 p. "Real estate salesperson" includes any person who, for
40 compensation, valuable consideration or commission, or other thing
41 of value, or by reason of a promise or reasonable expectation
42 thereof, is employed by and operates under the supervision of a
43 licensed real estate broker to sell or offer to sell, buy or offer to buy
44 or negotiate the purchase, sale, or exchange of real estate, or offers
45 or attempts to negotiate a loan secured or to be secured by a
46 mortgage or other encumbrance upon or transfer of real estate, or to
47 lease or rent, or offer to lease or rent any real estate for others, or to
48 collect rents for the use of real estate, or to solicit for prospective

1 purchasers or lessees of real estate, or who is employed by a
2 licensed real estate broker to sell or offer to sell lots or other parcels
3 of real estate, at a stated salary, or upon a commission, or upon a
4 salary and commission, or otherwise to sell real estate, or any parts
5 thereof, in lots or other parcels.

6 q. "Disability" means physical or sensory disability, infirmity,
7 malformation, or disfigurement which is caused by bodily injury,
8 birth defect, or illness including epilepsy and other seizure
9 disorders, and which shall include, but not be limited to, any degree
10 of paralysis, amputation, lack of physical coordination, blindness or
11 visual impairment, deafness or hearing impairment, muteness or
12 speech impairment, or physical reliance on a service or guide dog,
13 wheelchair, or other remedial appliance or device, or any mental,
14 psychological, or developmental disability, including autism
15 spectrum disorders, resulting from anatomical, psychological,
16 physiological, or neurological conditions which prevents the typical
17 exercise of any bodily or mental functions or is demonstrable,
18 medically or psychologically, by accepted clinical or laboratory
19 diagnostic techniques. Disability shall also mean AIDS or HIV
20 infection.

21 r. "Blind person" or "person who is blind" means any
22 individual whose central visual acuity does not exceed 20/200 in the
23 better eye with correcting lens or whose visual acuity is better than
24 20/200 if accompanied by a limit to the field of vision in the better
25 eye to such a degree that its widest diameter subtends an angle of
26 no greater than 20 degrees.

27 s. "Guide dog" means a dog used to assist persons who are
28 deaf, or which is fitted with a special harness so as to be suitable as
29 an aid to the mobility of a person who is blind, and is used by a
30 person who is blind and has satisfactorily completed a specific
31 course of training in the use of such a dog, and has been trained by
32 an organization generally recognized by agencies involved in the
33 rehabilitation of persons with disabilities, including, but not limited
34 to, those persons who are blind or deaf, as reputable and competent
35 to provide dogs with training of this type.

36 t. "Guide or service dog trainer" means any person who is
37 employed by an organization generally recognized by agencies
38 involved in the rehabilitation of persons with disabilities, including,
39 but not limited to, those persons who are blind, have visual
40 impairments, or are deaf or have hearing impairments, as reputable
41 and competent to provide dogs with training, as defined in this
42 section, and who is actually involved in the training process.

43 u. "Housing accommodation" means any publicly assisted
44 housing accommodation or any real property, or portion thereof,
45 which is used or occupied, or is intended, arranged, or designed to
46 be used or occupied, as the home, residence, or sleeping place of
47 one or more persons, but shall not include any single family

- 1 residence the occupants of which rent, lease, or furnish for
2 compensation not more than one room therein.
- 3 v. "Public facility" means any place of public accommodation
4 and any street, highway, sidewalk, walkway, public building, and
5 any other place or structure to which the general public is regularly,
6 normally, or customarily permitted or invited.
- 7 w. "Deaf person" or "person who is deaf" means any person
8 whose hearing is so severely impaired that the person is unable to
9 hear and understand conversational speech through the unaided ear
10 alone, and who must depend primarily on an assistive listening
11 device or visual communication such as writing, lip reading, sign
12 language, and gestures.
- 13 x. "Atypical hereditary cellular or blood trait" means sickle cell
14 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
15 fibrosis trait.
- 16 y. "Sickle cell trait" means the condition wherein the major
17 natural hemoglobin components present in the blood of the
18 individual are hemoglobin A (normal) and hemoglobin S (sickle
19 hemoglobin) as defined by standard chemical and physical analytic
20 techniques, including electrophoresis; and the proportion of
21 hemoglobin A is greater than the proportion of hemoglobin S or one
22 natural parent of the individual is shown to have only normal
23 hemoglobin components (hemoglobin A, hemoglobin A2,
24 hemoglobin F) in the normal proportions by standard chemical and
25 physical analytic tests.
- 26 z. "Hemoglobin C trait" means the condition wherein the major
27 natural hemoglobin components present in the blood of the
28 individual are hemoglobin A (normal) and hemoglobin C as defined
29 by standard chemical and physical analytic techniques, including
30 electrophoresis; and the proportion of hemoglobin A is greater than
31 the proportion of hemoglobin C or one natural parent of the
32 individual is shown to have only normal hemoglobin components
33 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
34 proportions by standard chemical and physical analytic tests.
- 35 aa. "Thalassemia trait" means the presence of the thalassemia
36 gene which in combination with another similar gene results in the
37 chronic hereditary disease Cooley's anemia.
- 38 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
39 which in combination with another similar gene results in the
40 chronic hereditary disease Tay-Sachs.
- 41 cc. "Cystic fibrosis trait" means the presence of the cystic
42 fibrosis gene which in combination with another similar gene
43 results in the chronic hereditary disease cystic fibrosis.
- 44 dd. "Service dog" means any dog individually trained to the
45 requirements of a person with a disability including, but not limited
46 to minimal protection work, rescue work, pulling a wheelchair or
47 retrieving dropped items. This term shall include a "seizure dog"

1 trained to alert or otherwise assist persons with epilepsy or other
2 seizure disorders.

3 ee. "Qualified Medicaid applicant" means an individual who is a
4 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

5 ff. "AIDS" means acquired immune deficiency syndrome as
6 defined by the Centers for Disease Control and Prevention of the
7 United States Public Health Service.

8 gg. "HIV infection" means infection with the human
9 immunodeficiency virus or any other related virus identified as a
10 probable causative agent of AIDS.

11 hh. "Affectional or sexual orientation" means male or female
12 heterosexuality, homosexuality, or bisexuality by inclination,
13 practice, identity, or expression, having a history thereof or being
14 perceived, presumed, or identified by others as having such an
15 orientation.

16 ii. "Heterosexuality" means affectional, emotional, or physical
17 attraction or behavior which is primarily directed towards persons
18 of the other gender.

19 jj. "Homosexuality" means affectional, emotional, or physical
20 attraction or behavior which is primarily directed towards persons
21 of the same gender.

22 kk. "Bisexuality" means affectional, emotional, or physical
23 attraction or behavior which is directed towards persons of either
24 gender.

25 ll. "Familial status" means being the natural parent of a child,
26 the adoptive parent of a child, the resource family parent of a child,
27 having a "parent and child relationship" with a child as defined by
28 State law, or having sole or joint legal or physical custody, care,
29 guardianship, or visitation with a child, or any person who is
30 pregnant or is in the process of securing legal custody of any
31 individual who has not attained the age of 18 years.

32 mm. "Housing for older persons" means housing:

33 (1) provided under any State program that the Attorney General
34 determines is specifically designed and operated to assist persons
35 who are elderly (as defined in the State program); or provided under
36 any federal program that the United States Department of Housing
37 and Urban Development determines is specifically designed and
38 operated to assist persons who are elderly (as defined in the federal
39 program); or

40 (2) intended for, and solely occupied by, persons 62 years of age
41 or older; or

42 (3) intended and operated for occupancy by at least one person
43 55 years of age or older per unit. In determining whether housing
44 qualifies as housing for older persons under this paragraph, the
45 Attorney General shall adopt regulations which require at least the
46 following factors:

47 (a) the existence of significant facilities and services
48 specifically designed to meet the physical or social needs of older

1 persons, or if the provision of such facilities and services is not
2 practicable, that such housing is necessary to provide important
3 housing opportunities for older persons; and

4 (b) that at least 80 percent of the units are occupied by at least
5 one person 55 years of age or older per unit; and

6 (c) the publication of, and adherence to, policies and procedures
7 which demonstrate an intent by the owner or manager to provide
8 housing for persons 55 years of age or older.

9 Housing shall not fail to meet the requirements for housing for
10 older persons by reason of: persons residing in such housing as of
11 September 13, 1988 not meeting the age requirements of this
12 subsection, provided that new occupants of such housing meet the
13 age requirements of this subsection; or unoccupied units, provided
14 that such units are reserved for occupancy by persons who meet the
15 age requirements of this subsection.

16 nn. "Genetic characteristic" means any inherited gene or
17 chromosome, or alteration thereof, that is scientifically or medically
18 believed to predispose an individual to a disease, disorder, or
19 syndrome, or to be associated with a statistically significant
20 increased risk of development of a disease, disorder, or syndrome.

21 oo. "Genetic information" means the information about genes,
22 gene products, or inherited characteristics that may derive from an
23 individual or family member.

24 pp. "Genetic test" means a test for determining the presence or
25 absence of an inherited genetic characteristic in an individual,
26 including tests of nucleic acids such as DNA, RNA, and
27 mitochondrial DNA, chromosomes, or proteins in order to identify a
28 predisposing genetic characteristic.

29 qq. "Domestic partnership" means a domestic partnership
30 established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

31 rr. "Gender identity or expression" means having or being
32 perceived as having a gender related identity or expression whether
33 or not stereotypically associated with a person's assigned sex at
34 birth.

35 ss. "Civil Union" means a legally recognized union of two
36 eligible individuals established pursuant to R.S.37:1-1 et seq. and
37 P.L.2006, c.103 (C.37:1-28 et al.).

38 tt. "Premium wages" means additional remuneration for night,
39 weekend, or holiday work, or for standby or irregular duty.

40 uu. "Premium benefit" means an employment benefit, such as
41 seniority, group life insurance, health insurance, disability
42 insurance, sick leave, annual leave, or an educational or pension
43 benefit that is greater than the employment benefit due the
44 employee for an equivalent period of work performed during the
45 regular work schedule of the employee.

46 vv. "Pregnancy" means pregnancy, childbirth, false pregnancy,
47 termination of pregnancy, or medical conditions related to
48 pregnancy or childbirth, including recovery from childbirth.

1 ww. “Breastfeeding” means breastfeeding, expressing milk for
2 breastfeeding, or medical conditions related to breastfeeding.

3 xx. “Health program or activity” means the provision or
4 administration of health-related services, health-related insurance
5 coverage, or other health-related coverage, and the provision of
6 assistance to individuals in obtaining health-related services or
7 health-related insurance coverage. For an entity principally
8 engaged in providing or administering health services or health
9 insurance coverage or other health coverage, all of its operations are
10 considered part of the health program or activity unless expressly
11 excluded pursuant to P.L.1945, c.169 (C.10:5-1 et seq.). Such
12 entities shall include a health care facility or long-term care facility
13 licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a
14 residential or community-based treatment facility, a health care
15 practice operated by a licensed or certified health care practitioner,
16 a health benefits plan or carrier, as those terms are defined in
17 section 2 of P.L.1997, c.192 (C.26:2S-2), or any similar entity, as
18 well as the operations of the State Medicaid and NJ FamilyCare
19 programs.

20 (cf: P.L.2017, c.131, s.8)

21
22 2. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to
23 read as follows:

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

26 a. For an employer, because of the race, creed, color, national
27 origin, ancestry, age, marital status, civil union status, domestic
28 partnership status, affectional or sexual orientation, genetic
29 information, pregnancy **【or】** status, breastfeeding status, sex,
30 gender identity or expression, disability or atypical hereditary
31 cellular or blood trait of any individual, or because of the liability
32 for service in the Armed Forces of the United States or the
33 nationality of any individual, or because of the refusal to submit to
34 a genetic test or make available the results of a genetic test to an
35 employer, to refuse to hire or employ or to bar or to discharge or
36 require to retire, unless justified by lawful considerations other than
37 age, from employment such individual or to discriminate against
38 such individual in compensation or in terms, conditions or
39 privileges of employment; provided, however, it shall not be an
40 unlawful employment practice to refuse to accept for employment
41 an applicant who has received a notice of induction or orders to
42 report for active duty in the armed forces; provided further that
43 nothing herein contained shall be construed to bar an employer from
44 refusing to accept for employment any person on the basis of sex in
45 those certain circumstances where sex is a bona fide occupational
46 qualification, reasonably necessary to the normal operation of the
47 particular business or enterprise; provided further that nothing
48 herein contained shall be construed to bar an employer from

1 refusing to accept for employment or to promote any person over 70
2 years of age; provided further that it shall not be an unlawful
3 employment practice for a club exclusively social or fraternal to use
4 club membership as a uniform qualification for employment, or for
5 a religious association or organization to utilize religious affiliation
6 as a uniform qualification in the employment of clergy, religious
7 teachers or other employees engaged in the religious activities of
8 the association or organization, or in following the tenets of its
9 religion in establishing and utilizing criteria for employment of an
10 employee; provided further, that it shall not be an unlawful
11 employment practice to require the retirement of any employee
12 who, for the two-year period immediately before retirement, is
13 employed in a bona fide executive or a high policy-making position,
14 if that employee is entitled to an immediate non-forfeitable annual
15 retirement benefit from a pension, profit sharing, savings or
16 deferred retirement plan, or any combination of those plans, of the
17 employer of that employee which equals in the aggregate at least
18 \$27,000.00; and provided further that an employer may restrict
19 employment to citizens of the United States where such restriction
20 is required by federal law or is otherwise necessary to protect the
21 national interest.

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

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

32 For the purposes of this subsection, an unlawful employment
33 practice occurs, with respect to discrimination in compensation or
34 in the financial terms or conditions of employment, each occasion
35 that an individual is affected by application of a discriminatory
36 compensation decision or other practice, including, but not limited
37 to, each occasion that wages, benefits, or other compensation are
38 paid, resulting in whole or in part from the decision or other
39 practice.

40 In addition to any other relief authorized by the "Law Against
41 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for
42 discrimination in compensation or in the financial terms or
43 conditions of employment, liability shall accrue and an aggrieved
44 person may obtain relief for back pay for the entire period of time,
45 except not more than six years, in which the violation with regard to
46 discrimination in compensation or in the financial terms or
47 conditions of employment has been continuous, if the violation
48 continues to occur within the statute of limitations.

1 Nothing in this subsection shall prohibit the application of the
2 doctrine of "continuing violation" or the "discovery rule" to any
3 appropriate claim as those doctrines currently exist in New Jersey
4 common law. It shall be an unlawful employment practice to
5 require employees or prospective employees to consent to a
6 shortened statute of limitations or to waive any of the protections
7 provided by the "Law Against Discrimination," P.L.1945, c.169
8 (C.10:5-1 et seq.).

9 b. For a labor organization, because of the race, creed, color,
10 national origin, ancestry, age, marital status, civil union status,
11 domestic partnership status, affectional or sexual orientation,
12 gender identity or expression, disability, pregnancy **[or]** status,
13 breastfeeding status, or sex of any individual, or because of the
14 liability for service in the Armed Forces of the United States or
15 nationality of any individual, to exclude or to expel from its
16 membership such individual or to discriminate in any way against
17 any of its members, against any applicant for, or individual included
18 in, any apprentice or other training program or against any
19 employer or any individual employed by an employer; provided,
20 however, that nothing herein contained shall be construed to bar a
21 labor organization from excluding from its apprentice or other
22 training programs any person on the basis of sex in those certain
23 circumstances where sex is a bona fide occupational qualification
24 reasonably necessary to the normal operation of the particular
25 apprentice or other training program.

26 c. For any employer or employment agency to print or circulate
27 or cause to be printed or circulated any statement, advertisement or
28 publication, or to use any form of application for employment, or to
29 make an inquiry in connection with prospective employment, which
30 expresses, directly or indirectly, any limitation, specification or
31 discrimination as to race, creed, color, national origin, ancestry,
32 age, marital status, civil union status, domestic partnership status,
33 affectional or sexual orientation, gender identity or expression,
34 disability, nationality, pregnancy **[or]** status, breastfeeding status,
35 or sex or liability of any applicant for employment for service in the
36 Armed Forces of the United States, or any intent to make any such
37 limitation, specification or discrimination, unless based upon a bona
38 fide occupational qualification.

39 d. For any person to take reprisals against any person because
40 that person has opposed any practices or acts forbidden under this
41 act or because that person has sought legal advice regarding rights
42 under this act, shared relevant information with legal counsel,
43 shared information with a governmental entity, or filed a complaint,
44 testified or assisted in any proceeding under this act or to coerce,
45 intimidate, threaten or interfere with any person in the exercise or
46 enjoyment of, or on account of that person having aided or
47 encouraged any other person in the exercise or enjoyment of, any
48 right granted or protected by this act.

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

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

45 (2) Notwithstanding the definition of "a place of public
46 accommodation" as set forth in subsection 1. of section 5 of
47 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
48 manager, superintendent, agent, or employee of any private club or

1 association to directly or indirectly refuse, withhold from or deny to
2 any individual who has been accepted as a club member and has
3 contracted for or is otherwise entitled to full club membership any
4 of the accommodations, advantages, facilities or privileges thereof,
5 or to discriminate against any member in the furnishing thereof on
6 account of the race, creed, color, national origin, ancestry, marital
7 status, civil union status, domestic partnership status, pregnancy
8 **【or】** status, breastfeeding status, sex, gender identity, or expression,
9 affectional or sexual orientation, disability, liability for service in
10 the Armed Forces of the United States or nationality of such person.

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

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

24 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
25 to deny to or withhold from any person or group of persons any real
26 property or part or portion thereof because of race, creed, color,
27 national origin, ancestry, marital status, civil union status, domestic
28 partnership status, pregnancy **【or】** status, breastfeeding status, sex,
29 gender identity or expression, affectional or sexual orientation,
30 familial status, disability, liability for service in the Armed Forces
31 of the United States, nationality, or source of lawful income used
32 for rental or mortgage payments;

33 (2) To discriminate against any person or group of persons
34 because of race, creed, color, national origin, ancestry, marital
35 status, civil union status, domestic partnership status, pregnancy
36 **【or】** status, breastfeeding status, sex, gender identity or expression,
37 affectional or sexual orientation, familial status, disability, liability
38 for service in the Armed Forces of the United States, nationality or
39 source of lawful income used for rental or mortgage payments in
40 the terms, conditions or privileges of the sale, rental or lease of any
41 real property or part or portion thereof or in the furnishing of
42 facilities or services in connection therewith;

43 (3) To print, publish, circulate, issue, display, post or mail, or
44 cause to be printed, published, circulated, issued, displayed, posted
45 or mailed any statement, advertisement, publication or sign, or to
46 use any form of application for the purchase, rental, lease,
47 assignment or sublease of any real property or part or portion
48 thereof, or to make any record or inquiry in connection with the

1 prospective purchase, rental, lease, assignment, or sublease of any
2 real property, or part or portion thereof which expresses, directly or
3 indirectly, any limitation, specification or discrimination as to race,
4 creed, color, national origin, ancestry, marital status, civil union
5 status, domestic partnership status, pregnancy **【or】** status,
6 breastfeeding status, sex, gender identity, or expression, affectional
7 or sexual orientation, familial status, disability, liability for service
8 in the Armed Forces of the United States, nationality, or source of
9 lawful income used for rental or mortgage payments, or any intent
10 to make any such limitation, specification or discrimination, and the
11 production of any such statement, advertisement, publicity, sign,
12 form of application, record, or inquiry purporting to be made by any
13 such person shall be presumptive evidence in any action that the
14 same was authorized by such person; provided, however, that
15 nothing contained in this subsection shall be construed to bar any
16 person from refusing to sell, rent, lease, assign or sublease or from
17 advertising or recording a qualification as to sex for any room,
18 apartment, flat in a dwelling or residential facility which is planned
19 exclusively for and occupied by individuals of one sex to any
20 individual of the exclusively opposite sex on the basis of sex
21 provided individuals shall be qualified based on their gender
22 identity or expression;

23 (4) 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 the source of any
26 lawful income received by the person or the source of any lawful
27 rent payment to be paid for the real property; or

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

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

37 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
38 sale, rental, lease, assignment, or sublease any real property or part
39 or portion thereof to any person or group of persons or to refuse to
40 negotiate for the sale, rental, lease, assignment, or sublease of any
41 real property or part or portion thereof to any person or group of
42 persons because of race, creed, color, national origin, ancestry,
43 marital status, civil union status, domestic partnership status,
44 familial status, pregnancy **【or】** status, breastfeeding status, sex,
45 gender identity or expression, affectional or sexual orientation,
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, or to represent that any real property or portion

1 thereof is not available for inspection, sale, rental, lease,
2 assignment, or sublease when in fact it is so available, or otherwise
3 to deny or withhold any real property or any part or portion of
4 facilities thereof to or from any person or group of persons because
5 of race, creed, color, national origin, ancestry, marital status, civil
6 union status, domestic partnership status, familial status, pregnancy
7 **[or]** status, breastfeeding status, sex, gender identity or expression,
8 affectional or sexual orientation, disability, liability for service in
9 the Armed Forces of the United States, or nationality;

10 (2) To discriminate against any person because of race, creed,
11 color, national origin, ancestry, marital status, civil union status,
12 domestic partnership status, familial status, pregnancy **[or]** status,
13 breastfeeding status, sex, gender identity or expression, affectional
14 or sexual orientation, disability, liability for service in the Armed
15 Forces of the United States, nationality, or source of lawful income
16 used for rental or mortgage payments in the terms, conditions or
17 privileges of the sale, rental, lease, assignment or sublease of any
18 real property or part or portion thereof or in the furnishing of
19 facilities or services in connection therewith;

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

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

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

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

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

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

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

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

1 m. For any person to:

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

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

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

29 n. For any person to aid, abet, incite, compel, coerce, or induce
30 the doing of any act forbidden by subsections l. and m. of section
31 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
32 do so. Such prohibited conduct shall include, but not be limited to:

33 (1) Buying from, selling to, leasing from or to, licensing,
34 contracting with, trading with, providing goods, services, or
35 information to, or otherwise doing business with any person
36 because that person does, or agrees or attempts to do, any such act
37 or any act prohibited by this subsection; or

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

47 o. For any multiple listing service, real estate brokers'
48 organization or other service, organization or facility related to the

1 business of selling or renting dwellings to deny any person access
2 to or membership or participation in such organization, or to
3 discriminate against such person in the terms or conditions of such
4 access, membership, or participation, on account of race, creed,
5 color, national origin, ancestry, age, marital status, civil union
6 status, domestic partnership status, familial status, pregnancy **[or]**
7 status, breastfeeding status, sex, gender identity or expression,
8 affectional or sexual orientation, disability, liability for service in
9 the Armed Forces of the United States or nationality.

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

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

34 (a) The number of the hours worked by the employee which are
35 counted towards the accruing of seniority, pension or other benefits;
36 or

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

39 (2) For an employer to refuse to permit an employee to utilize
40 leave, as provided for in this subsection q., which is solely used to
41 accommodate the employee's sincerely held religious observance or
42 practice. Except where it would cause an employer to incur an
43 undue hardship, no person shall be required to remain at his place
44 of employment during any day or days or portion thereof that, as a
45 requirement of his religion, he observes as his Sabbath or other holy
46 day, including a reasonable time prior and subsequent thereto for
47 travel between his place of employment and his home; provided that
48 any such absence from work shall, wherever practicable in the

1 reasonable judgment of the employer, be made up by an equivalent
2 amount of time and work at some other mutually convenient time,
3 or shall be charged against any leave with pay ordinarily granted,
4 other than sick leave, and any such absence not so made up or
5 charged, may be treated by the employer of that person as leave
6 taken without pay.

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

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

15 (i) The identifiable cost of the accommodation, including the
16 costs of loss of productivity and of retaining or hiring employees or
17 transferring employees from one facility to another, in relation to
18 the size and operating cost of the employer.

19 (ii) The number of individuals who will need the particular
20 accommodation for a sincerely held religious observance or
21 practice.

22 (iii) For an employer with multiple facilities, the degree to
23 which the geographic separateness or administrative or fiscal
24 relationship of the facilities will make the accommodation more
25 difficult or expensive.

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

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

34 (ii) This subsection q. shall not apply where the uniform
35 application of terms and conditions of attendance to employees is
36 essential to prevent undue hardship to the employer. The burden of
37 proof regarding the applicability of this subparagraph (d) shall be
38 upon the employer.

39 r. For any employer to take reprisals against any employee for
40 requesting from, discussing with, or disclosing to, any other
41 employee or former employee of the employer, a lawyer from
42 whom the employee seeks legal advice, or any government agency
43 information regarding the job title, occupational category, and rate
44 of compensation, including benefits, of the employee or any other
45 employee or former employee of the employer, or the gender, race,
46 ethnicity, military status, or national origin of the employee or any
47 other employee or former employee of the employer, regardless of
48 whether the request was responded to, or to require, as a condition

1 of employment, any employee or prospective employee to sign a
2 waiver, or to otherwise require an employee or prospective
3 employee to agree, not to make those requests or disclosures.
4 Nothing in this subsection shall be construed to require an
5 employee to disclose such information about the employee herself
6 to any other employee or former employee of the employer or to
7 any authorized representative of the other employee or former
8 employee.

9 s. For an employer to treat, for employment-related purposes, a
10 woman employee that the employer knows, or should know, is
11 affected by pregnancy or breastfeeding in a manner less favorable
12 than the treatment of other persons not affected by pregnancy or
13 breastfeeding but similar in their ability or inability to work. In
14 addition, an employer of an employee who is a woman affected by
15 pregnancy shall make available to the employee reasonable
16 accommodation in the workplace, such as bathroom breaks, breaks
17 for increased water intake, periodic rest, assistance with manual
18 labor, job restructuring or modified work schedules, and temporary
19 transfers to less strenuous or hazardous work, for needs related to
20 the pregnancy when the employee, based on the advice of her
21 physician, requests the accommodation, and, in the case of a
22 employee breast feeding her infant child, the accommodation shall
23 include reasonable break time each day to the employee and a
24 suitable room or other location with privacy, other than a toilet stall,
25 in close proximity to the work area for the employee to express
26 breast milk for the child, unless the employer can demonstrate that
27 providing the accommodation would be an undue hardship on the
28 business operations of the employer. The employer shall not in any
29 way penalize the employee in terms, conditions or privileges of
30 employment for requesting or using the accommodation. Workplace
31 accommodation provided pursuant to this subsection and paid or
32 unpaid leave provided to an employee affected by pregnancy or
33 breastfeeding shall not be provided in a manner less favorable than
34 accommodations or leave provided to other employees not affected
35 by pregnancy or breastfeeding but similar in their ability or inability
36 to work. This subsection shall not be construed as otherwise
37 increasing or decreasing any employee's rights under law to paid or
38 unpaid leave in connection with pregnancy or breastfeeding.

39 **【For the purposes of this section "pregnancy or breastfeeding"**
40 **means pregnancy, childbirth, and breast feeding or expressing milk**
41 **for breastfeeding, or medical conditions related to pregnancy,**
42 **childbirth, or breastfeeding, including recovery from childbirth.】**

43 For the purposes of this subsection, in determining whether an
44 accommodation would impose undue hardship on the operation of
45 an employer's business, the factors to be considered include: the
46 overall size of the employer's business with respect to the number
47 of employees, number and type of facilities, and size of budget; the
48 type of the employer's operations, including the composition and

1 structure of the employer's workforce; the nature and cost of the
2 accommodation needed, taking into consideration the availability of
3 tax credits, tax deductions, and outside funding; and the extent to
4 which the accommodation would involve waiver of an essential
5 requirement of a job as opposed to a tangential or non-business
6 necessity requirement.

7 t. For an employer to pay any of its employees who is a
8 member of a protected class at a rate of compensation, including
9 benefits, which is less than the rate paid by the employer to
10 employees who are not members of the protected class for
11 substantially similar work, when viewed as a composite of skill,
12 effort and responsibility. An employer who is paying a rate of
13 compensation in violation of this subsection shall not reduce the
14 rate of compensation of any employee in order to comply with this
15 subsection. An employer may pay a different rate of compensation
16 only if the employer demonstrates that the differential is made
17 pursuant to a seniority system, a merit system, or the employer
18 demonstrates:

19 (1) That the differential is based on one or more legitimate, bona
20 fide factors other than the characteristics of members of the
21 protected class, such as training, education or experience, or the
22 quantity or quality of production;

23 (2) That the factor or factors are not based on, and do not
24 perpetuate, a differential in compensation based on sex or any other
25 characteristic of members of a protected class;

26 (3) That each of the factors is applied reasonably;

27 (4) That one or more of the factors account for the entire wage
28 differential; and

29 (5) That the factors are job-related with respect to the position
30 in question and based on a legitimate business necessity. A factor
31 based on business necessity shall not apply if it is demonstrated that
32 there are alternative business practices that would serve the same
33 business purpose without producing the wage differential.

34 Comparisons of wage rates shall be based on wage rates in all of
35 an employer's operations or facilities. For the purposes of this
36 subsection, "member of a protected class" means an employee who
37 has one or more characteristics, including race, creed, color,
38 national origin, nationality, ancestry, age, marital status, civil union
39 status, domestic partnership status, affectional or sexual orientation,
40 genetic information, pregnancy, breastfeeding, sex, gender identity
41 or expression, disability or atypical hereditary cellular or blood trait
42 of any individual, or liability for service in the armed forces, for
43 which subsection a. of this section prohibits an employer from
44 refusing to hire or employ or barring or discharging or requiring to
45 retire from employment or discriminating against the individual in
46 compensation or in terms, conditions or privileges of employment.

47 u. For any entity that operates a health program or activity to:

1 (1) exclude participation in, deny the benefits of, or otherwise
2 subject to discrimination under any health program or activity on
3 the basis of an individual's race, creed, color, national origin,
4 nationality, ancestry, age, marital status, civil union status, domestic
5 partnership status, affectional or sexual orientation, genetic
6 information, pregnancy status, breastfeeding status, sex, gender
7 identity or expression, disability or atypical hereditary cellular or
8 blood trait of any individual, or liability for service in the armed
9 forces;

10 (2) aid or perpetuate discrimination against any person by
11 providing significant assistance to any entity or person that
12 discriminates on the basis of race, creed, color, national origin,
13 nationality, ancestry, age, marital status, civil union status, domestic
14 partnership status, affectional or sexual orientation, genetic
15 information, pregnancy status, breastfeeding status, sex, gender
16 identity or expression, disability or atypical hereditary cellular or
17 blood trait of any individual, or liability for service in the armed
18 forces;

19 (3) (a) through contractual or other arrangements, utilize criteria
20 or methods of administration that have the effect of subjecting
21 individuals to discrimination on the basis of sex; or

22 (b) make selections when determining the site or location of a
23 facility that have the effect of excluding individuals from, denying
24 them the benefits of, or subjecting them to discrimination under any
25 health program or activity on the basis of sex, or substantially
26 impairing the accomplishments of the program or activity on the
27 basis of sex.

28 Nothing in this paragraph shall be construed to prohibit an entity
29 from operating a sex-specific health program or activity, provided
30 that the entity demonstrates an exceedingly persuasive justification
31 that the sex-specific health program or activity is substantially
32 related to the achievement of an important health-related to
33 scientific objective;

34 (4) treat any individual in a manner inconsistent with that
35 individual's gender identity;

36 (5) fail to ensure that communications with individuals with
37 disabilities are as effective as communications with others in the
38 health program or activity, which may include failure to provide
39 appropriate auxiliary aids and services to individuals with impaired
40 sensory, manual, or speaking skills, when such aids and services are
41 necessary to ensure the individual equal opportunity to benefit from
42 the service in question;

43 (6) fail to ensure that, when newly constructing or making
44 alterations to all or any part of a facility, the affected portions of the
45 facility are accessible to individuals with disabilities, consistent
46 with the current applicable standards for accessible design adopted
47 pursuant to the "Americans with Disabilities Act of 1990," 42
48 U.S.C. s.12101 et seq.;

1 (7) fail to ensure that any health programs or activities provided
2 through electronic and information technology are accessible to
3 individuals with disabilities, unless doing so would result in undue
4 financial and administrative burdens or a fundamental alteration in
5 the nature of the health program or activity. In the event that
6 compliance would result in an undue financial and administrative
7 burden or a fundamental alteration in the nature of the health
8 program or activity, the entity shall provide information in a format
9 other than an electronic format that would not result in such undue
10 financial and administrative burdens or a fundamental alteration in
11 the nature of the health program or activity, provided that, to the
12 maximum extent possible, the entity shall ensure that individuals
13 with disabilities receive the benefits or services of the health
14 program or activity that are provided through electronic and
15 information technology;

16 (8) fail to make reasonable modifications to policies, practices,
17 or procedures when necessary to avoid discrimination on the basis
18 of disability, unless the entity can demonstrate that making the
19 modifications would fundamentally alter the nature of the health
20 program or activity;

21 (9) engage in marketing practices or benefit designs that
22 discriminate on the basis of disability;

23 (10) fail to provide meaningful access to individuals with limited
24 English proficiency who are eligible to receive the benefits or
25 services of the health program or activity, including, but not limited
26 to, providing, free of charge, language assistance services,
27 interpreter and translation services to assist with oral
28 communications, and qualified translator services to assist with
29 written communications, subject to the following requirements:

30 (a) in the event that the entity provides video remote
31 interpreting services, the entity shall ensure the health program or
32 activity: uses real-time, full-motion video and audio over a
33 dedicated high-speed, wide-bandwidth video connection or wireless
34 connection that produces high-quality video images without lags,
35 choppy, blurry, or grainy images, or irregular pauses in
36 communication; provides a sharply-delineated image that is large
37 enough to display the interpreter's face and the participating
38 individual's face, regardless of the individual's body position;
39 provides a clear, audible transmission of voices; and provides
40 adequate training to users of the technology and other involved
41 individuals to ensure they are able to quickly and efficiently set up
42 and operate the video remote interpreting;

43 (b) in evaluating whether an entity is in compliance with the
44 requirements of this paragraph, the division shall: evaluate, and
45 give substantial weight to, the nature and importance to the
46 individual with limited English proficiency of the health program or
47 activity and the particular communication at issue; and take into
48 account other relevant factors, including whether the entity has

1 developed and implemented an effective written language access
2 plan appropriate to its particular circumstances;

3 (c) nothing in this paragraph shall be construed to authorize any
4 entity to require an individual to: provide the individual's own
5 interpreter; rely on an accompanying adult or minor child to provide
6 interpretation services, except when expressly requested by the
7 individual with limited English proficiency or in an emergency
8 involving imminent threat to the safety or welfare of the individual
9 or the public when there is no qualified interpreter for the individual
10 who is immediately available; or rely on staff other than qualified
11 bilingual or multilingual staff to provide interpretation services for
12 the individual; and

13 (d) nothing in this paragraph shall be construed to require any
14 individual with limited English proficiency to accept language
15 assistance services; or

16 (11) in the case of an entity providing or administering a health
17 benefits plan, to discriminate against any individual on the basis of
18 an individual's race, creed, color, national origin, nationality,
19 ancestry, age, marital status, civil union status, domestic partnership
20 status, affectional or sexual orientation, genetic information,
21 pregnancy status, breastfeeding status, sex, gender identity or
22 expression, disability or atypical hereditary cellular or blood trait of
23 any individual, or liability for service in the armed forces,
24 including:

25 (a) denying, canceling, limiting, or refusing to issue or renew a
26 health benefits plan, or denying or limiting coverage of a claim, or
27 imposing additional cost sharing or other limitations on coverage,
28 on the basis of an individual's race, creed, color, national origin,
29 nationality, ancestry, age, marital status, civil union status, domestic
30 partnership status, affectional or sexual orientation, genetic
31 information, pregnancy status, breastfeeding status, sex, gender
32 identity or expression, disability or atypical hereditary cellular or
33 blood trait of any individual, or liability for service in the armed
34 forces;

35 (b) having or implementing marketing practices or benefit
36 designs that discriminate on the basis of an individual's race, creed,
37 color, national origin, nationality, ancestry, age, marital status, civil
38 union status, domestic partnership status, affectional or sexual
39 orientation, genetic information, pregnancy status, breastfeeding
40 status, sex, gender identity or expression, disability or atypical
41 hereditary cellular or blood trait of any individual, or liability for
42 service in the armed forces;

43 (c) denying or limiting coverage, denying or limiting coverage
44 of a claim, or imposing additional cost sharing or other limitations
45 or restrictions on coverage for any health services to a transgender
46 individual that are ordinarily or exclusively available to individuals
47 of one sex if such denial, limitation, or other restriction is based on
48 the fact that the individual's sex assigned at birth, gender identity,

1 or gender otherwise recorded is different from the one to which
2 such health services are ordinarily or exclusively available;

3 (d) having or implementing a categorical coverage exclusion or
4 limitation for all health services related to gender transition; or

5 (e) otherwise denying or limiting coverage, denying or limiting
6 coverage of a claim, or imposing additional cost sharing limitations
7 or restrictions on coverage for specific health services related to
8 gender transition if such denial, limitation, or restriction results in
9 discrimination against a transgender individual.

10 Nothing in paragraph (11) of this subsection shall be construed
11 to determine, or restrict an entity providing or administering a
12 health benefits plan from determining, whether a particular health
13 service is medically necessary or otherwise meets applicable
14 coverage requirements in any individual case.

15 Each entity that operates a health program or activity shall take
16 appropriate steps to notify beneficiaries, enrollees, applicants, and
17 members of the public: that the entity does not discriminate on the
18 basis of race, creed, color, national origin, nationality, ancestry,
19 age, marital status, civil union status, domestic partnership status,
20 affectional or sexual orientation, genetic information, pregnancy
21 status, breastfeeding status, sex, gender identity or expression,
22 disability or atypical hereditary cellular or blood trait of any
23 individual, or liability for service in the armed forces; that the entity
24 provides appropriate auxiliary aids and services, including qualified
25 interpreters for individuals with disabilities and information in
26 alternate formats, free of charge and in a timely manner, when such
27 aids and services are necessary to ensure an equal opportunity to
28 participate to individuals with disabilities; that the entity provides
29 language assistance services, including translated documents and
30 oral interpretation, free of charge and in a timely manner, when
31 such services are necessary to provide meaningful access to
32 individuals with limited English proficiency; how to obtain the aids
33 and services described in the notice; and how to file a
34 discrimination complaint with the division. This notice shall be
35 provided in a form and manner as shall be prescribed by the director
36 by regulation, and shall include, at a minimum, posting the notice in
37 a conspicuous location and by preparing and posting taglines in the
38 15 most common non-English languages spoken in the State.

39 As used in this subsection:

40 “Auxiliary aids and services” includes the use of:

41 (i) qualified interpreters to provide on-site or remote video
42 interpreting services; note takers; real-time computer-aided
43 transcription services; written materials; exchange of written notes;
44 telephone handset amplifiers; assistive listening devices; assistive
45 listening systems; telephones compatible with hearing aids; closed
46 caption decoders; open and closed captioning, including real-time
47 captioning; voice, text, and video-based telecommunications
48 products and systems, text telephones, videophones, captioned

1 telephones, and any other equally-effective telecommunications
2 device; videotext displays; accessible electronic and information
3 technology; and any other effective methods of making aurally-
4 delivered information available to individuals who are deaf or hard
5 of hearing;

6 (ii) qualified readers; taped texts; audio recordings; Braille
7 materials and displays; screen reader software; magnification
8 software; optical readers; secondary auditory programs; large print
9 materials; accessible electronic and information technology; or
10 other effective methods of making visually-delivered information
11 available to individuals who are blind or who have low vision;

12 (iii) acquisition or modification of equipment and devices; and

13 (iv) other similar services and actions.

14 “Language assistance services” means, but is not limited to: oral
15 language assistance for an individual with limited English
16 proficiency, including interpretation in non-English languages
17 provided in-person or remotely by a qualified interpreter; the use of
18 qualified bilingual or multilingual staff to communicate directly
19 with individuals with limited English proficiency; written
20 translation, performed by a qualified translator, of written content
21 into language other than English; and taglines.

22 “Qualified bilingual or multilingual staff” means a member of
23 the entity’s staff who is designated by the entity to provide oral
24 language assistance as part of the individual’s current, assigned job
25 responsibilities, and who demonstrates to the entity that the staff
26 member: is proficient in speaking and understanding both spoken
27 English and at least one other spoken language, including any
28 necessary specialized vocabulary, terminology, and phraseology;
29 and is able to effectively, accurately, and impartially communicate
30 directly with individuals with limited English proficiency in their
31 primary languages.

32 “Qualified interpreter for an individual with a disability” means
33 an individual who, through a remote video interpreting service or an
34 on-site appearance, adheres to generally-accepted interpreter ethics
35 principles, including client confidentiality, and is able to interpret
36 effectively, accurately, and impartially, both receptively and
37 expressively, using any necessary specialized vocabulary,
38 terminology, and phraseology. Qualified interpreters may include
39 sign language interpreters, oral transliterators, and cued language
40 translitterators.

41 “Qualified interpreter for an individual with limited English
42 proficiency” means an individual who, through a remote video
43 interpreting service or an on-site appearance, adheres to generally-
44 accepted interpreter ethics principles, including client
45 confidentiality, has demonstrated proficiency in speaking and
46 understanding both spoken English and at least one other language,
47 and is able to interpret effectively, accurately, and impartially, both

1 receptively and expressively, using any necessary specialized
2 vocabulary, terminology, and phraseology.

3 “Qualified translator” means a translator who adheres to
4 generally-accepted translator ethics principles, including client
5 confidentiality, has demonstrated proficiency in writing and
6 understanding both written English and at least one other written
7 non-English language, and is able to interpret effectively,
8 accurately, and impartially, both receptively and expressively, to
9 and from such language into English, using any necessary
10 specialized vocabulary, terminology, and phraseology.

11 “Taglines” means short statements written in non-English
12 languages that indicate the availability of language assistance
13 services free of charge.

14 v. To engage in any unlawful employment practice or unlawful
15 discrimination, as set forth in subsections a. through u. of this
16 section, against an individual on the basis of the race, creed, color,
17 national origin, nationality, ancestry, age, marital status, civil union
18 status, domestic partnership status, affectional or sexual orientation,
19 genetic information, pregnancy status, breastfeeding status, sex,
20 gender identity or expression, disability or atypical hereditary
21 cellular or blood trait of any individual, or liability for service in the
22 armed forces of another individual with whom the individual is
23 known or believed to have a relationship or association.

24 (cf: P.L.2018, c.9, s.2)

25

26 3. This act shall take effect 180 days after the date of
27 enactment.

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STATEMENT

31

32 This bill expands the “Law Against Discrimination” (LAD),
33 P.L.1945, c.169 (C.10:5-1 et seq.), to apply to health programs and
34 activities, which are defined in the bill to mean the provision or
35 administration of health-related services, health-related insurance
36 coverage or other health-related coverage, and the provision of
37 assistance to individuals in obtaining health-related services or
38 health-related insurance coverage. The entities the bill will apply to
39 include, but are not limited to, health care facilities, long-term care
40 facilities, residential and community-based treatment facilities, and
41 health care practices operated by a licensed or certified health care
42 practitioner, as well as health benefits plans, health benefits
43 carriers, and the State Medicaid and NJ FamilyCare programs.

44 The LAD generally prohibits discrimination in the workplace, in
45 places of public accommodation, and in transactions involving
46 housing and other real property against an individual based on the
47 individual being a member of a protected class, including race,
48 creed, color, national origin, nationality, ancestry, age, marital

1 status, civil union status, domestic partnership status, affectional or
2 sexual orientation, genetic information, pregnancy status,
3 breastfeeding status, sex, gender identity or expression, disability or
4 atypical hereditary cellular or blood trait of any individual, or
5 liability for service in the armed forces. In some cases, the LAD
6 provides broad protections for all protected classes; in other cases,
7 it provides specific protections to specific populations, such as
8 workplace protections for women who are pregnant or breastfeeding
9 or for individuals to practice religious observances.

10 The bill will expand the existing LAD protections to provide that
11 it will constitute unlawful discrimination for any entity that operates
12 a health program or activity to:

13 (1) exclude, deny, otherwise discriminate against individual in a
14 health program or activity on the basis of the individual being a
15 member of any protected class;

16 (2) aid or perpetuate discrimination against any person by
17 providing significant assistance to any entity or person that
18 discriminates on the basis of any protected class;

19 (3) utilize criteria or methods of administration or, when making
20 selections when determining the site or location of a facility, that
21 have the effect of discriminating on the basis of sex;

22 (4) treat any individual in a manner inconsistent with that
23 individual's gender identity;

24 (5) fail to ensure that communications with individuals with
25 disabilities are as effective as communications with others in the
26 health program or activity, which may include failure to provide
27 appropriate auxiliary aids and services when necessary to ensure the
28 individual has equal opportunity to benefit from the service in
29 question;

30 (6) fail to ensure that, when newly constructing or making
31 alterations to all or part of a facility, the affected portions of the
32 facility are accessible to individuals with disabilities, consistent
33 with the current applicable standards for accessible design adopted
34 pursuant to the "Americans with Disabilities Act of 1990," 42
35 U.S.C. s.12101 et seq.;

36 (7) fail to ensure that any health programs or activities provided
37 through electronic and information technology are accessible to
38 individuals with disabilities, unless doing so would result in undue
39 financial and administrative burdens or a fundamental alteration in
40 the nature of the health program or activity;

41 (8) fail to make reasonable modifications to policies, practices,
42 or procedures when necessary to avoid discrimination on the basis
43 of disability, unless the entity can demonstrate that making the
44 modifications would fundamentally alter the nature of the health
45 program or activity;

46 (9) engage in marketing practices or benefit designs that
47 discriminate on the basis of disability;

1 (10) fail to provide meaningful access to individuals with limited
2 English proficiency who are eligible to receive the benefits or
3 services of the health program or activity, including providing
4 appropriate interpretation and translation services for oral and
5 written communications, which may be provided in-person or
6 electronically; or

7 (11) in the case of an entity providing or administering a health
8 benefits plan, to discriminate against any individual on the basis of
9 the individual being a member of a protected class, including:
10 denying, canceling, limiting, or refusing to issue or renew a health
11 benefits plan; denying or limiting coverage of a claim; imposing
12 additional cost sharing or other limitations on coverage; having or
13 implementing marketing practices or benefit designs that
14 discriminate on the basis of any protected class; having or
15 implementing a categorical coverage exclusion or limitation for all
16 health services related to gender transition; or otherwise engaging
17 in practices that discriminate against any transgender individual.

18 Each entity that operates a health program or activity will be
19 required to provide notice to beneficiaries, enrollees, applicants,
20 and members of the public that: the entity does not discriminate on
21 the basis of any protected class; the entity provides appropriate
22 auxiliary aids and services free of charge and in a timely manner to
23 individuals with a disability; and the entity provides language
24 assistance services free of charge. The notice is to further describe
25 how to obtain the aids and services described in the notice and how
26 to file a discrimination complaint with the Division on Civil Rights
27 in the Department of Law and Public Safety. The notice is to be
28 provided in a form and manner prescribed by the Director of the
29 Division on Civil Rights by regulation, which will include, at a
30 minimum, posting the notice in a conspicuous location and
31 preparing and posting taglines, which are short non-English notices
32 describing the availability of free language assistance services, in
33 the 15 most common non-English languages spoken in the State.

34 The bill further prohibits any act of unlawful discrimination or
35 any unlawful employment practice when taken against an individual
36 based on the individual's association with a member of any
37 protected class.