

SENATE, No. 397

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Co-Sponsored by:

Senators Diegnan, Thompson, Greenstein, Pou, Lagana and Testa

SYNOPSIS

Expands scope of law prohibiting age discrimination.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/6/2021)

1 **AN ACT** concerning age discrimination and revising various parts of
2 the statutory law.

3

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

6

7 1. Section 1 of P.L.1938, c.295 (C.10:3-1) is amended to read
8 as follows:

9 1. In the selection of persons for employment in the service of
10 the State, or of any county or municipality thereof, no appointing
11 officer shall discriminate against any such applicant because such
12 applicant has attained the age of at least 40 years, at the time of said
13 application for employment. Any provisions of law, executive
14 order, rule or regulation to the contrary notwithstanding, no person
15 other than a justice of the Supreme Court or a judge of the Superior
16 Court pursuant to Article VI, Section VI, paragraph 3 of the
17 Constitution of the State of New Jersey, or a judge of the Tax
18 Court, or a judge of the Office of Administrative Law or a judge of
19 the Division of Workers' Compensation, or a member of the
20 Division of State Police, employed in the service of the State, or of
21 any county or municipality thereof, or a member of a police or fire
22 department employed in the service of the State or of any county or
23 municipality thereof, shall be required to retire upon the attainment
24 of a particular age unless the public employer can show that **the**
25 retirement age bears a manifest relationship to the employment in
26 question or that **the** person in the service of the State, or of any
27 county or municipality thereof, is unable to adequately perform the
28 person's duties. A contract of tenure or similar arrangement
29 providing for tenure shall not bar a public employer from showing
30 that **a** retirement age bears a manifest relationship to the
31 employment in question or that **the** person in the service of the
32 State, or of any county or municipality thereof, is unable to
33 adequately perform the person's duties. A person in the employ of
34 the State, or of any county or municipality thereof, who is required
35 to retire upon the attainment of a particular age in violation of this
36 section shall be entitled to reinstatement with back pay and interest.
37 (cf: P.L.1999, c.380, s.15)

38

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

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

43 a. For an employer, because of the race, creed, color, national
44 origin, ancestry, age, marital status, civil union status, domestic
45 partnership status, affectional or sexual orientation, genetic

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 information, pregnancy or breastfeeding, sex, gender identity or
2 expression, disability or atypical hereditary cellular or blood trait of
3 any individual, or because of the liability for service in the Armed
4 Forces of the United States or the nationality of any individual, or
5 because of the refusal to submit to a genetic test or make available
6 the results of a genetic test to an employer, to refuse to hire or
7 employ or to bar or to discharge or require to retire, unless justified
8 by lawful considerations other than age, from employment such
9 individual or to discriminate against such individual in
10 compensation or in terms, conditions or privileges of employment;
11 provided, however, it shall not be an unlawful employment practice
12 to refuse to accept for employment an applicant who has received a
13 notice of induction or orders to report for active duty in the armed
14 forces; provided further that nothing herein contained shall be
15 construed to bar an employer from refusing to accept for
16 employment any person on the basis of sex in those certain
17 circumstances where sex is a bona fide occupational qualification,
18 reasonably necessary to the normal operation of the particular
19 business or enterprise; [provided further that nothing herein
20 contained shall be construed to bar an employer from refusing to
21 accept for employment or to promote any person over 70 years of
22 age;] provided further that it shall not be an unlawful employment
23 practice for a club exclusively social or fraternal to use club
24 membership as a uniform qualification for employment, or for a
25 religious association or organization to utilize religious affiliation
26 as a uniform qualification in the employment of clergy, religious
27 teachers or other employees engaged in the religious activities of
28 the association or organization, or in following the tenets of its
29 religion in establishing and utilizing criteria for employment of an
30 employee; provided further, that it shall not be an unlawful
31 employment practice to require the retirement of any employee
32 who, for the two-year period immediately before retirement, is
33 employed in a bona fide executive or a high policy-making position,
34 if that employee is entitled to an immediate non-forfeitable annual
35 retirement benefit from a pension, profit sharing, savings or
36 deferred retirement plan, or any combination of those plans, of the
37 employer of that employee which equals in the aggregate at least
38 \$27,000.00; and provided further that an employer may restrict
39 employment to citizens of the United States where such restriction
40 is required by federal law or is otherwise necessary to protect the
41 national interest.

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

46 For the purposes of this subsection, a "bona fide executive" is a
47 top level employee who exercises substantial executive authority

1 over a significant number of employees and a large volume of
2 business. A "high policy-making position" is a position in which a
3 person plays a significant role in developing policy and in
4 recommending the implementation thereof.

5 For the purposes of this subsection, an unlawful employment
6 practice occurs, with respect to discrimination in compensation or
7 in the financial terms or conditions of employment, each occasion
8 that an individual is affected by application of a discriminatory
9 compensation decision or other practice, including, but not limited
10 to, each occasion that wages, benefits, or other compensation are
11 paid, resulting in whole or in part from the decision or other
12 practice.

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

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

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

1 c. For any employer or employment agency to print or circulate
2 or cause to be printed or circulated any statement, advertisement or
3 publication, or to use any form of application for employment, or to
4 make an inquiry in connection with prospective employment, which
5 expresses, directly or indirectly, any limitation, specification or
6 discrimination as to race, creed, color, national origin, ancestry,
7 age, marital status, civil union status, domestic partnership status,
8 affectional or sexual orientation, gender identity or expression,
9 disability, nationality, pregnancy or breastfeeding, or sex or liability
10 of any applicant for employment for service in the Armed Forces of
11 the United States, or any intent to make any such limitation,
12 specification or discrimination, unless based upon a bona fide
13 occupational qualification.

14 d. For any person to take reprisals against any person because
15 that person has opposed any practices or acts forbidden under this
16 act or because that person has sought legal advice regarding rights
17 under this act, shared relevant information with legal counsel,
18 shared information with a governmental entity, or filed a complaint,
19 testified or assisted in any proceeding under this act or to coerce,
20 intimidate, threaten or interfere with any person in the exercise or
21 enjoyment of, or on account of that person having aided or
22 encouraged any other person in the exercise or enjoyment of, any
23 right granted or protected by this act.

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

27 f. (1) For any owner, lessee, proprietor, manager,
28 superintendent, agent, or employee of any place of public
29 accommodation directly or indirectly to refuse, withhold from or
30 deny to any person any of the accommodations, advantages,
31 facilities or privileges thereof, or to discriminate against any person
32 in the furnishing thereof, or directly or indirectly to publish,
33 circulate, issue, display, post or mail any written or printed
34 communication, notice, or advertisement to the effect that any of
35 the accommodations, advantages, facilities, or privileges of any
36 such place will be refused, withheld from, or denied to any person
37 on account of the race, creed, color, national origin, ancestry,
38 marital status, civil union status, domestic partnership status,
39 pregnancy or breastfeeding, sex, gender identity or expression,
40 affectional or sexual orientation, disability, liability for service in
41 the Armed Forces of the United States or nationality of such person,
42 or that the patronage or custom thereat of any person of any
43 particular race, creed, color, national origin, ancestry, marital status,
44 civil union status, domestic partnership status, pregnancy or
45 breastfeeding status, sex, gender identity or expression, affectional
46 or sexual orientation, disability, liability for service in the Armed
47 Forces of the United States or nationality is unwelcome,

1 objectionable or not acceptable, desired or solicited, and the
2 production of any such written or printed communication, notice or
3 advertisement, purporting to relate to any such place and to be made
4 by any owner, lessee, proprietor, superintendent or manager thereof,
5 shall be presumptive evidence in any action that the same was
6 authorized by such person; provided, however, that nothing
7 contained herein shall be construed to bar any place of public
8 accommodation which is in its nature reasonably restricted
9 exclusively to individuals of one sex, and which shall include but
10 not be limited to any summer camp, day camp, or resort camp,
11 bathhouse, dressing room, swimming pool, gymnasium, comfort
12 station, dispensary, clinic or hospital, or school or educational
13 institution which is restricted exclusively to individuals of one sex,
14 provided individuals shall be admitted based on their gender
15 identity or expression, from refusing, withholding from or denying
16 to any individual of the opposite sex any of the accommodations,
17 advantages, facilities or privileges thereof on the basis of sex;
18 provided further, that the foregoing limitation shall not apply to any
19 restaurant as defined in R.S.33:1-1 or place where alcoholic
20 beverages are served.

21 (2) Notwithstanding the definition of "a place of public
22 accommodation" as set forth in subsection 1. of section 5 of
23 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
24 manager, superintendent, agent, or employee of any private club or
25 association to directly or indirectly refuse, withhold from or deny to
26 any individual who has been accepted as a club member and has
27 contracted for or is otherwise entitled to full club membership any
28 of the accommodations, advantages, facilities or privileges thereof,
29 or to discriminate against any member in the furnishing thereof on
30 account of the race, creed, color, national origin, ancestry, marital
31 status, civil union status, domestic partnership status, pregnancy or
32 breastfeeding, sex, gender identity, or expression, affectional or
33 sexual orientation, disability, liability for service in the Armed
34 Forces of the United States or nationality of such person.

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

43 g. For any person, including but not limited to, any owner,
44 lessee, sublessee, assignee or managing agent of, or other person
45 having the right of ownership or possession of or the right to sell,
46 rent, lease, assign, or sublease any real property or part or portion
47 thereof, or any agent or employee of any of these:

- 1 (1) 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 race, creed, color,
4 national origin, ancestry, marital status, civil union status, domestic
5 partnership status, pregnancy or breastfeeding, sex, gender identity
6 or expression, affectional or sexual orientation, familial status,
7 disability, liability for service in the Armed Forces of the United
8 States, nationality, or source of lawful income used for rental or
9 mortgage payments;
- 10 (2) To discriminate against any person or group of persons
11 because of race, creed, color, national origin, ancestry, marital
12 status, civil union status, domestic partnership status, pregnancy or
13 breastfeeding, sex, gender identity or expression, affectional or
14 sexual orientation, familial status, disability, liability for service in
15 the Armed Forces of the United States, nationality or source of
16 lawful income used for rental or mortgage payments in the terms,
17 conditions or privileges of the sale, rental or lease of any real
18 property or part or portion thereof or in the furnishing of facilities
19 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, pregnancy or breastfeeding, sex,
31 gender identity, or expression, affectional or sexual orientation,
32 familial status, disability, liability for service in the Armed Forces
33 of the United States, nationality, or source of lawful income used
34 for rental or mortgage payments, or any intent to make any such
35 limitation, specification or discrimination, and the production of
36 any such statement, advertisement, publicity, sign, form of
37 application, record, or inquiry purporting to be made by any such
38 person shall be presumptive evidence in any action that the same
39 was authorized by such person; provided, however, that nothing
40 contained in this subsection shall be construed to bar any person
41 from refusing to sell, rent, lease, assign or sublease or from
42 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 by individuals of one sex to any
45 individual of the exclusively opposite sex on the basis of sex
46 provided individuals shall be qualified based on their gender
47 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 h. For any person, including but not limited to, any real estate
14 broker, real estate salesperson, or employee or agent thereof:

15 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
16 sale, rental, lease, assignment, or sublease any real property or part
17 or portion thereof to any person or group of persons or to refuse to
18 negotiate for the sale, rental, lease, assignment, or sublease of any
19 real property or part or portion thereof to any person or group of
20 persons because of race, creed, color, national origin, ancestry,
21 marital status, civil union status, domestic partnership status,
22 familial status, pregnancy or breastfeeding, sex, gender identity or
23 expression, affectional or sexual orientation, liability for service in
24 the Armed Forces of the United States, disability, nationality, or
25 source of lawful income used for rental or mortgage payments, or to
26 represent that any real property or portion thereof is not available
27 for inspection, sale, rental, lease, assignment, or sublease when in
28 fact it is so available, or otherwise to deny or withhold any real
29 property or any part or portion of facilities thereof to or from any
30 person or group of persons because of race, creed, color, national
31 origin, ancestry, marital status, civil union status, domestic
32 partnership status, familial status, pregnancy or breastfeeding, sex,
33 gender identity or expression, affectional or sexual orientation,
34 disability, liability for service in the Armed Forces of the United
35 States, or nationality;

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

46 (3) To print, publish, circulate, issue, display, post, or mail, or
47 cause to be printed, published, circulated, issued, displayed, posted

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

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

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

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

1 (1) To discriminate against any person or group of persons
2 because of race, creed, color, national origin, ancestry, marital
3 status, civil union status, domestic partnership status, pregnancy or
4 breastfeeding, sex, gender identity or expression, affectional or
5 sexual orientation, disability, liability for service in the Armed
6 Forces of the United States, familial status or nationality, in the
7 granting, withholding, extending, modifying, renewing, or
8 purchasing, or in the fixing of the rates, terms, conditions or
9 provisions of any such loan, extension of credit or financial
10 assistance or purchase thereof or in the extension of services in
11 connection therewith;

12 (2) To use any form of application for such loan, extension of
13 credit or financial assistance or to make record or inquiry in
14 connection with applications for any such loan, extension of credit
15 or financial assistance which expresses, directly or indirectly, any
16 limitation, specification or discrimination as to race, creed, color,
17 national origin, ancestry, marital status, civil union status, domestic
18 partnership status, pregnancy or breastfeeding, sex, gender identity
19 or expression, affectional or sexual orientation, disability, liability
20 for service in the Armed Forces of the United States, familial status
21 or nationality or any intent to make any such limitation,
22 specification or discrimination; unless otherwise required by law or
23 regulation to retain or use such information;

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

25 (4) To discriminate against any person or group of persons
26 because of the source of any lawful income received by the person
27 or the source of any lawful rent payment to be paid for the real
28 property; or

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

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

40 k. For any real estate broker, real estate salesperson or
41 employee or agent thereof or any other individual, corporation,
42 partnership, or organization, for the purpose of inducing a
43 transaction for the sale or rental of real property from which
44 transaction such person or any of its members may benefit
45 financially, to represent that a change has occurred or will or may
46 occur in the composition with respect to race, creed, color, national
47 origin, ancestry, marital status, civil union status, domestic

1 partnership status, familial status, pregnancy or breastfeeding, sex,
2 gender identity or expression, affectional or sexual orientation,
3 disability, liability for service in the Armed Forces of the United
4 States, nationality, or source of lawful income used for rental or
5 mortgage payments of the owners or occupants in the block,
6 neighborhood or area in which the real property is located, and to
7 represent, directly or indirectly, that this change will or may result
8 in undesirable consequences in the block, neighborhood or area in
9 which the real property is located, including, but not limited to the
10 lowering of property values, an increase in criminal or anti-social
11 behavior, or a decline in the quality of schools or other facilities.

12 1. For any person to refuse to buy from, sell to, lease from or
13 to, license, contract with, or trade with, provide goods, services or
14 information to, or otherwise do business with any other person on
15 the basis of the race, creed, color, national origin, ancestry, age,
16 pregnancy or breastfeeding, sex, gender identity or expression,
17 affectional or sexual orientation, marital status, civil union status,
18 domestic partnership status, liability for service in the Armed
19 Forces of the United States, disability, nationality, or source of
20 lawful income used for rental or mortgage payments of such other
21 person or of such other person's spouse, partners, members,
22 stockholders, directors, officers, managers, superintendents, agents,
23 employees, business associates, suppliers, or customers. This
24 subsection shall not prohibit refusals or other actions (1) pertaining
25 to employee-employer collective bargaining, labor disputes, or
26 unfair labor practices, or (2) made or taken in connection with a
27 protest of unlawful discrimination or unlawful employment
28 practices.

29 m. For any person to:

30 (1) Grant or accept any letter of credit or other document which
31 evidences the transfer of funds or credit, or enter into any contract
32 for the exchange of goods or services, where the letter of credit,
33 contract, or other document contains any provisions requiring any
34 person to discriminate against or to certify that he, she or it has not
35 dealt with any other person on the basis of the race, creed, color,
36 national origin, ancestry, age, pregnancy or breastfeeding, sex,
37 gender identity or expression, affectional or sexual orientation,
38 marital status, civil union status, domestic partnership status,
39 disability, liability for service in the Armed Forces of the United
40 States, or nationality of such other person or of such other person's
41 spouse, partners, members, stockholders, directors, officers,
42 managers, superintendents, agents, employees, business associates,
43 suppliers, or customers.

44 (2) Refuse to grant or accept any letter of credit or other
45 document which evidences the transfer of funds or credit, or refuse
46 to enter into any contract for the exchange of goods or services, on

1 the ground that it does not contain such a discriminatory provision
2 or certification.

3 The provisions of this subsection shall not apply to any letter of
4 credit, contract, or other document which contains any provision
5 pertaining to employee-employer collective bargaining, a labor
6 dispute or an unfair labor practice, or made in connection with the
7 protest of unlawful discrimination or an unlawful employment
8 practice, if the other provisions of such letter of credit, contract, or
9 other document do not otherwise violate the provisions of this
10 subsection.

11 n. For any person to aid, abet, incite, compel, coerce, or induce
12 the doing of any act forbidden by subsections l. and m. of section
13 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
14 do so. Such prohibited conduct shall include, but not be limited to:

15 (1) Buying from, selling to, leasing from or to, licensing,
16 contracting with, trading with, providing goods, services, or
17 information to, or otherwise doing business with any person
18 because that person does, or agrees or attempts to do, any such act
19 or any act prohibited by this subsection; or

20 (2) Boycotting, commercially blacklisting or refusing to buy
21 from, sell to, lease from or to, license, contract with, provide goods,
22 services or information to, or otherwise do business with any person
23 because that person has not done or refuses to do any such act or
24 any act prohibited by this subsection; provided that this subsection
25 shall not prohibit refusals or other actions either pertaining to
26 employee-employer collective bargaining, labor disputes, or unfair
27 labor practices, or made or taken in connection with a protest of
28 unlawful discrimination or unlawful employment practices.

29 o. For any multiple listing service, real estate brokers'
30 organization or other service, organization or facility related to the
31 business of selling or renting dwellings to deny any person access
32 to or membership or participation in such organization, or to
33 discriminate against such person in the terms or conditions of such
34 access, membership, or participation, on account of race, creed,
35 color, national origin, ancestry, age, marital status, civil union
36 status, domestic partnership status, familial status, pregnancy or
37 breastfeeding, sex, gender identity or expression, affectional or
38 sexual orientation, disability, liability for service in the Armed
39 Forces of the United States or nationality.

40 p. Nothing in the provisions of this section shall affect the
41 ability of an employer to require employees to adhere to reasonable
42 workplace appearance, grooming and dress standards not precluded
43 by other provisions of State or federal law, except that an employer
44 shall allow an employee to appear, groom and dress consistent with
45 the employee's gender identity or expression.

46 q. (1) For any employer to impose upon a person as a
47 condition of obtaining or retaining employment, including

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

17 (a) The number of the hours worked by the employee which are
18 counted towards the accruing of seniority, pension or other benefits;
19 or

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

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

38 (3) (a) For purposes of this subsection q., "undue hardship"
39 means an accommodation requiring unreasonable expense or
40 difficulty, unreasonable interference with the safe or efficient
41 operation of the workplace or a violation of a bona fide seniority
42 system or a violation of any provision of a bona fide collective
43 bargaining agreement.

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

46 (i) The identifiable cost of the accommodation, including the
47 costs of loss of productivity and of retaining or hiring employees or

1 transferring employees from one facility to another, in relation to
2 the size and operating cost of the employer.

3 (ii) The number of individuals who will need the particular
4 accommodation for a sincerely held religious observance or
5 practice.

6 (iii) For an employer with multiple facilities, the degree to which
7 the geographic separateness or administrative or fiscal relationship
8 of the facilities will make the accommodation more difficult or
9 expensive.

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

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

18 (ii) This subsection q. shall not apply where the uniform
19 application of terms and conditions of attendance to employees is
20 essential to prevent undue hardship to the employer. The burden of
21 proof regarding the applicability of this subparagraph (d) shall be
22 upon the employer.

23 r. For any employer to take reprisals against any employee for
24 requesting from , discussing with, or disclosing to, any other
25 employee or former employee of the employer, a lawyer from
26 whom the employee seeks legal advice, or any government agency
27 information regarding the job title, occupational category, and rate
28 of compensation, including benefits, of the employee or any other
29 employee or former employee of the employer, or the gender, race,
30 ethnicity, military status, or national origin of the employee or any
31 other employee or former employee of the employer, regardless of
32 whether the request was responded to , or to require, as a condition
33 of employment, any employee or prospective employee to sign a
34 waiver, or to otherwise require an employee or prospective
35 employee to agree, not to make those requests or disclosures.
36 Nothing in this subsection shall be construed to require an
37 employee to disclose such information about the employee herself
38 to any other employee or former employee of the employer or to
39 any authorized representative of the other employee or former
40 employee.

41 s. For an employer to treat, for employment-related purposes, a
42 woman employee that the employer knows, or should know, is
43 affected by pregnancy or breastfeeding in a manner less favorable
44 than the treatment of other persons not affected by pregnancy or
45 breastfeeding but similar in their ability or inability to work. In
46 addition, an employer of an employee who is a woman affected by
47 pregnancy shall make available to the employee reasonable

1 accommodation in the workplace, such as bathroom breaks, breaks
2 for increased water intake, periodic rest, assistance with manual
3 labor, job restructuring or modified work schedules, and temporary
4 transfers to less strenuous or hazardous work, for needs related to
5 the pregnancy when the employee, based on the advice of her
6 physician, requests the accommodation, and, in the case of a
7 employee breast feeding her infant child, the accommodation shall
8 include reasonable break time each day to the employee and a
9 suitable room or other location with privacy, other than a toilet stall,
10 in close proximity to the work area for the employee to express
11 breast milk for the child, unless the employer can demonstrate that
12 providing the accommodation would be an undue hardship on the
13 business operations of the employer. The employer shall not in any
14 way penalize the employee in terms, conditions or privileges of
15 employment for requesting or using the accommodation. Workplace
16 accommodation provided pursuant to this subsection and paid or
17 unpaid leave provided to an employee affected by pregnancy or
18 breastfeeding shall not be provided in a manner less favorable than
19 accommodations or leave provided to other employees not affected
20 by pregnancy or breastfeeding but similar in their ability or inability
21 to work. This subsection shall not be construed as otherwise
22 increasing or decreasing any employee's rights under law to paid or
23 unpaid leave in connection with pregnancy or breastfeeding.

24 For the purposes of this section "pregnancy or breastfeeding"
25 means pregnancy, childbirth, and breast feeding or expressing milk
26 for breastfeeding, or medical conditions related to pregnancy,
27 childbirth, or breastfeeding, including recovery from childbirth.

28 For the purposes of this subsection, in determining whether an
29 accommodation would impose undue hardship on the operation of
30 an employer's business, the factors to be considered include: the
31 overall size of the employer's business with respect to the number
32 of employees, number and type of facilities, and size of budget; the
33 type of the employer's operations, including the composition and
34 structure of the employer's workforce; the nature and cost of the
35 accommodation needed, taking into consideration the availability of
36 tax credits, tax deductions, and outside funding; and the extent to
37 which the accommodation would involve waiver of an essential
38 requirement of a job as opposed to a tangential or non-business
39 necessity requirement.

40 t. For an employer to pay any of its employees who is a
41 member of a protected class at a rate of compensation, including
42 benefits, which is less than the rate paid by the employer to
43 employees who are not members of the protected class for
44 substantially similar work, when viewed as a composite of skill,
45 effort and responsibility. An employer who is paying a rate of
46 compensation in violation of this subsection shall not reduce the
47 rate of compensation of any employee in order to comply with this

1 subsection. An employer may pay a different rate of compensation
2 only if the employer demonstrates that the differential is made
3 pursuant to a seniority system, a merit system, or the employer
4 demonstrates:

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

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

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

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

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

20 Comparisons of wage rates shall be based on wage rates in all of
21 an employer's operations or facilities. For the purposes of this
22 subsection, "member of a protected class" means an employee who
23 has one or more characteristics, including race, creed, color,
24 national origin, nationality, ancestry, age, marital status, civil union
25 status, domestic partnership status, affectional or sexual orientation,
26 genetic information, pregnancy, sex, gender identity or expression,
27 disability or atypical hereditary cellular or blood trait of any
28 individual, or liability for service in the armed forces, for which
29 subsection a. of this section prohibits an employer from refusing to
30 hire or employ or barring or discharging or requiring to retire from
31 employment or discriminating against the individual in
32 compensation or in terms, conditions or privileges of employment.

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

34
35 3. Section 5 of P.L.1985, c.73 (C.10:5-12.1) is amended to read
36 as follows:

37 5. **【Notwithstanding any provision of law to the contrary】** As
38 an alternative to or in addition to any other sanction provided by
39 any other applicable law, relief for having been required to retire in
40 violation of the provisions of section 11 of P.L.1945, c.169 (C.10:5-
41 12), shall be available to the person aggrieved by that violation
42 **【solely】** through the procedure initiated by filing a complaint with
43 the Attorney General under the provisions of P.L.1945, c.169
44 (C.10:5-1 et seq.).

45 **【Notwithstanding any provision to the contrary of】** As an
46 alternative to or in addition to any other sanction provided by
47 section 16 of P.L.1945, c.169 (C.10:5-17) or any other applicable

1 law, relief ordered for or granted to a person in connection with his
2 being required to retire in violation of the provisions of section 11
3 of P.L.1945, c.169 (C.10:5-12) shall **【be limited to his】** include
4 reinstatement with back pay and interest.
5 (cf: P.L.1985, c.73, s.5)

6
7 4. Section 4 of P.L.1985, c.73 (C.10:5-2.2) is repealed.

8
9 5. This act shall take effect immediately.

10
11
12 STATEMENT

13
14 This bill amends current law to extend protections against age
15 discrimination by:

16 1. Deleting the provision of section 1 of P.L.1938, c.295
17 (C.10:3-1) that permits a governmental employer to require
18 retirement when an employee attains a particular age if the
19 employer can show “that the retirement age bears a manifest
20 relationship to the employment in question”;

21 2. Deleting the provision of section 11 of the "Law Against
22 Discrimination," P.L.1945, c.169 (C.10:5-12) that states: “nothing
23 herein contained shall be construed to bar an employer from
24 refusing to accept for employment or to promote any person over 70
25 years,” having the effect of no longer permitting employers to
26 refuse to hire persons for the sole reason of being more than 70
27 years old;

28 3. Amending section 5 of P.L.1985, c.73 (C.10:5-12.1) to
29 provide that, in a claim of unlawfully being required to retire
30 because of age, an employee has available all of the remedies
31 provided by any applicable law, instead of, as that section currently
32 provides, being limited to filing a complaint with the Attorney
33 General and having relief limited to reinstatement with back pay
34 and interest; and

35 4. Repealing section 4 of P.L.1985, c.73 (C.10:5-2.2), which
36 permits institutions of higher education to require tenured
37 employees to retire at the age of 70 years.