

SENATE, No. 1136

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JANUARY 30, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

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.



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2

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

3

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

6

7 1. (New section) a. It shall be an unlawful discrimination for
8 any entity that operates a health program or activity to:

9 (1) exclude any individual from participation in, deny any
10 individual the benefits of, or otherwise subject any individual to
11 discrimination under any health program or activity on the basis of
12 that individual's race, creed, color, national origin, nationality,
13 ancestry, age, marital status, civil union status, domestic partnership
14 status, affectional or sexual orientation, genetic information,
15 pregnancy status, breastfeeding status, sex, gender identity or
16 expression, disability or atypical hereditary cellular or blood trait of
17 any individual, or liability for service in the armed forces;

18 (2) aid or perpetuate discrimination against any person by
19 providing significant assistance to any entity or person that
20 discriminates on the basis of race, creed, color, national origin,
21 nationality, ancestry, age, marital status, civil union status, domestic
22 partnership status, affectional or sexual orientation, genetic
23 information, pregnancy status, breastfeeding status, sex, gender
24 identity or expression, disability or atypical hereditary cellular or
25 blood trait of any individual, or liability for service in the armed
26 forces;

27 (3) (a) directly or through contractual or other arrangements,
28 utilize criteria or methods of administration that have the effect of
29 subjecting individuals to discrimination on the basis of sex, or have
30 the effect of defeating or substantially impairing accomplishment of
31 the objectives of the program with respect to individuals on the
32 basis of sex; or

33 (b) make selections when determining the site or location of a
34 facility that have the effect of excluding individuals from, denying
35 them the benefits of, or subjecting them to discrimination under any
36 health program or activity on the basis of sex, or substantially
37 impairing the accomplishments of the program or activity on the
38 basis of sex.

39 Nothing in this paragraph shall be construed to prohibit an entity
40 from operating a sex-specific health program or activity, provided
41 that the entity demonstrates an exceedingly persuasive justification
42 that the sex-specific health program or activity is substantially
43 related to the achievement of an important health-related or
44 scientific objective;

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

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 (5) fail to ensure that communications with individuals with
2 disabilities, including but not limited to individuals who are deaf or
3 hard of hearing, are as effective as communications with others in
4 the health program or activity and sufficient to ensure those
5 individuals an equal opportunity to participate in, and enjoy the
6 benefits of, the health program or activity, including, but not limited
7 to, providing, free of charge and in a timely manner, language
8 assistance services, interpreter and translation services to assist with
9 oral communications, and qualified translator services to assist with
10 oral and written communications;

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

17 (7) fail to ensure that any health programs or activities provided
18 through electronic and information technology are accessible to
19 individuals with disabilities, unless doing so would result in undue
20 financial and administrative burdens or a fundamental alteration in
21 the nature of the health program or activity. In the event that
22 compliance would result in an undue financial and administrative
23 burden or a fundamental alteration in the nature of the health
24 program or activity, the entity shall provide information in a format
25 other than an electronic format that would not result in such undue
26 financial and administrative burdens or a fundamental alteration in
27 the nature of the health program or activity, provided that, to the
28 maximum extent possible, the entity shall ensure that individuals
29 with disabilities receive the benefits or services of the health
30 program or activity that are provided through electronic and
31 information technology;

32 (8) fail to make reasonable accommodations and modifications
33 to policies, practices, or procedures when necessary to grant an
34 individual with a disability an equal opportunity to participate in,
35 and enjoy the benefits of, the health program or activity, unless the
36 entity demonstrates that making the accommodations or
37 modifications would be an undue burden or would fundamentally
38 alter the nature of the health program or activity;

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

41 (10) fail to take reasonable steps to provide meaningful access to
42 individuals with limited English proficiency who are eligible to
43 receive the benefits or services of the health program or activity,
44 including, but not limited to, providing, free of charge and in a
45 timely manner, language assistance services, interpreter and
46 translation services to assist with oral communications, and
47 qualified translator services to assist with written communications.

1 b. It shall be an unlawful discrimination for any entity
2 providing or administering a health benefits plan, to discriminate
3 against any individual on the basis of an individual's race, creed,
4 color, national origin, nationality, ancestry, age, marital status, civil
5 union status, domestic partnership status, affectional or sexual
6 orientation, genetic information, pregnancy status, breastfeeding
7 status, sex, gender identity or expression, disability or atypical
8 hereditary cellular or blood trait of any individual, or liability for
9 service in the armed forces, including by:

10 (1) denying, canceling, limiting, or refusing to issue or renew a
11 health benefits plan, or denying or limiting coverage of a claim, or
12 imposing additional cost sharing or other limitations on coverage,
13 on the basis of an individual's race, creed, color, national origin,
14 nationality, ancestry, age, marital status, civil union status, domestic
15 partnership status, affectional or sexual orientation, genetic
16 information, pregnancy status, breastfeeding status, sex, gender
17 identity or expression, disability or atypical hereditary cellular or
18 blood trait of any individual, or liability for service in the armed
19 forces;

20 (2) having or implementing marketing practices or benefit
21 designs that discriminate on the basis of an individual's race, creed,
22 color, national origin, nationality, ancestry, age, marital status, civil
23 union status, domestic partnership status, affectional or sexual
24 orientation, genetic information, pregnancy status, breastfeeding
25 status, sex, gender identity or expression, disability or atypical
26 hereditary cellular or blood trait of any individual, or liability for
27 service in the armed forces;

28 (3) denying or limiting coverage, denying or limiting coverage
29 of a claim, or imposing additional cost sharing or other limitations
30 or restrictions on coverage for any health services to a transgender
31 individual that are ordinarily or exclusively available to individuals
32 of one sex if such denial, limitation, or other restriction is based on
33 the fact that the individual's sex assigned at birth, gender identity,
34 or gender otherwise recorded is different from the one to which
35 such health services are ordinarily or exclusively available;

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

38 (5) otherwise denying or limiting coverage, denying or limiting
39 coverage of a claim, or imposing additional cost sharing limitations
40 or restrictions on coverage for specific health services related to
41 gender transition if such denial, limitation, or restriction results in
42 discrimination against a transgender individual.

43 For purposes of this subsection, "health benefits plan" means the
44 same as that term is defined in section 1 of P.L.1992, c.161
45 (C.17B:27A-2).

46 Nothing in this subsection shall be construed to determine, or
47 restrict an entity providing or administering a health benefits plan
48 from determining, whether a particular health service is medically

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1 necessary or otherwise meets applicable coverage requirements in
2 any individual case.

3 c. Each entity that operates a health program or activity shall
4 take appropriate initial and continuing steps to notify beneficiaries,
5 enrollees, applicants, and members of the public that:

6 (1) the entity does not discriminate on the basis of race, creed,
7 color, national origin, nationality, ancestry, age, marital status, civil
8 union status, domestic partnership status, affectional or sexual
9 orientation, genetic information, pregnancy status, breastfeeding
10 status, sex, gender identity or expression, disability or atypical
11 hereditary cellular or blood trait of any individual, or liability for
12 service in the armed forces; and

13 (2) the entity complies with the other provisions of the "Law
14 Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

15 This notice shall be posted in a conspicuous physical location
16 where the entity interacts with the public and in a conspicuous
17 location on the entity's website, and shall include taglines in the 10
18 most common non-English languages spoken in the State. The
19 Division on Civil Rights shall make available on its website the
20 content of a sample notice that conveys the information required by
21 this provision, including the taglines in the 10 most common non-
22 English languages spoken in the State.

23 d. Nothing in this section shall be construed to abrogate the
24 provisions of P.L.1974, c.111 (C.2A:65A-1 et seq.) or 42 U.S.C.
25 s.300a-7 et seq. with regard to any individual or entity.

26

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

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

31 a. "Person" includes one or more individuals, partnerships,
32 associations, organizations, labor organizations, corporations, legal
33 representatives, trustees, trustees in bankruptcy, receivers, and
34 fiduciaries.

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

37 c. "Labor organization" includes any organization which exists
38 and is constituted for the purpose, in whole or in part, of collective
39 bargaining, or of dealing with employers concerning grievances,
40 terms or conditions of employment, or of other mutual aid or
41 protection in connection with employment.

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

45 e. "Employer" includes all persons as defined in subsection a.
46 of this section unless otherwise specifically exempt under another
47 section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State,

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- 1 any political or civil subdivision thereof, and all public officers,
2 agencies, boards, or bodies.
- 3 f. "Employee" does not include any individual employed in the
4 domestic service of any person.
- 5 g. "Liability for service in the Armed Forces of the United
6 States" means subject to being ordered as an individual or member
7 of an organized unit into active service in the Armed Forces of the
8 United States by reason of membership in the National Guard, naval
9 militia or a reserve component of the Armed Forces of the United
10 States, or subject to being inducted into such armed forces through
11 a system of national selective service.
- 12 h. "Division" means the "Division on Civil Rights" created by
13 P.L.1945, c.169 (C.10:5-1 et seq.).
- 14 i. "Attorney General" means the Attorney General of the State
15 of New Jersey or the Attorney General's representative or designee.
- 16 j. "Commission" means the Commission on Civil Rights
17 created by P.L.1945, c.169 (C.10:5-1 et seq.).
- 18 k. "Director" means the Director of the Division on Civil
19 Rights.
- 20 l. "A place of public accommodation" shall include, but not be
21 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
22 summer camp, day camp, or resort camp, whether for entertainment
23 of transient guests or accommodation of those seeking health,
24 recreation, or rest; any producer, manufacturer, wholesaler,
25 distributor, retail shop, store, establishment, or concession dealing
26 with goods or services of any kind; any restaurant, eating house, or
27 place where food is sold for consumption on the premises; any
28 place maintained for the sale of ice cream, ice and fruit preparations
29 or their derivatives, soda water or confections, or where any
30 beverages of any kind are retailed for consumption on the premises;
31 any garage, any public conveyance operated on land or water or in
32 the air or any stations and terminals thereof; any bathhouse,
33 boardwalk, or seashore accommodation; any auditorium, meeting
34 place, or hall; any theatre, motion-picture house, music hall, roof
35 garden, skating rink, swimming pool, amusement and recreation
36 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
37 pool parlor, or other place of amusement; any comfort station; any
38 dispensary, clinic, or hospital; any public library; and any
39 kindergarten, primary and secondary school, trade or business
40 school, high school, academy, college and university, or any
41 educational institution under the supervision of the State Board of
42 Education or the Commissioner of Education of the State of New
43 Jersey. Nothing herein contained shall be construed to include or to
44 apply to any institution, bona fide club, or place of accommodation,
45 which is in its nature distinctly private; nor shall anything herein
46 contained apply to any educational facility operated or maintained
47 by a bona fide religious or sectarian institution, and the right of a
48 natural parent or one in loco parentis to direct the education and

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1 upbringing of a child under his control is hereby affirmed; nor shall
2 anything herein contained be construed to bar any private secondary
3 or post-secondary school from using in good faith criteria other than
4 race, creed, color, national origin, ancestry, gender identity, or
5 expression or affectional or sexual orientation in the admission of
6 students.

7 m. "A publicly assisted housing accommodation" shall include
8 all housing built with public funds or public assistance pursuant to
9 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
10 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
11 c.184, and all housing financed in whole or in part by a loan,
12 whether or not secured by a mortgage, the repayment of which is
13 guaranteed or insured by the federal government or any agency
14 thereof.

15 n. The term "real property" includes real estate, lands,
16 tenements and hereditaments, corporeal and incorporeal, and
17 leaseholds, provided, however, that, except as to publicly assisted
18 housing accommodations, the provisions of this act shall not apply
19 to the rental: (1) of a single apartment or flat in a two-family
20 dwelling, the other occupancy unit of which is occupied by the
21 owner as a residence; or (2) of a room or rooms to another person or
22 persons by the owner or occupant of a one-family dwelling
23 occupied by the owner or occupant as a residence at the time of
24 such rental. Nothing herein contained shall be construed to bar any
25 religious or denominational institution or organization, or any
26 organization operated for charitable or educational purposes, which
27 is operated, supervised, or controlled by or in connection with a
28 religious organization, in the sale, lease, or rental of real property,
29 from limiting admission to or giving preference to persons of the
30 same religion or denomination or from making such selection as is
31 calculated by such organization to promote the religious principles
32 for which it is established or maintained. Nor does any provision
33 under this act regarding discrimination on the basis of familial
34 status apply with respect to housing for older persons.

35 o. "Real estate broker" includes a person, firm, or corporation
36 who, for a fee, commission, or other valuable consideration, or by
37 reason of promise or reasonable expectation thereof, lists for sale,
38 sells, exchanges, buys or rents, or offers or attempts to negotiate a
39 sale, exchange, purchase, or rental of real estate or an interest
40 therein, or collects or offers or attempts to collect rent for the use of
41 real estate, or solicits for prospective purchasers or assists or directs
42 in the procuring of prospects or the negotiation or closing of any
43 transaction which does or is contemplated to result in the sale,
44 exchange, leasing, renting, or auctioning of any real estate, or
45 negotiates, or offers or attempts or agrees to negotiate a loan
46 secured or to be secured by mortgage or other encumbrance upon or
47 transfer of any real estate for others; or any person who, for
48 pecuniary gain or expectation of pecuniary gain conducts a public

1 or private competitive sale of lands or any interest in lands. In the
2 sale of lots, the term "real estate broker" shall also include any
3 person, partnership, association, or corporation employed by or on
4 behalf of the owner or owners of lots or other parcels of real estate,
5 at a stated salary, or upon a commission, or upon a salary and
6 commission or otherwise, to sell such real estate, or any parts
7 thereof, in lots or other parcels, and who shall sell or exchange, or
8 offer or attempt or agree to negotiate the sale or exchange, of any
9 such lot or parcel of real estate.

10 p. "Real estate salesperson" includes any person who, for
11 compensation, valuable consideration or commission, or other thing
12 of value, or by reason of a promise or reasonable expectation
13 thereof, is employed by and operates under the supervision of a
14 licensed real estate broker to sell or offer to sell, buy or offer to buy
15 or negotiate the purchase, sale, or exchange of real estate, or offers
16 or attempts to negotiate a loan secured or to be secured by a
17 mortgage or other encumbrance upon or transfer of real estate, or to
18 lease or rent, or offer to lease or rent any real estate for others, or to
19 collect rents for the use of real estate, or to solicit for prospective
20 purchasers or lessees of real estate, or who is employed by a
21 licensed real estate broker to sell or offer to sell lots or other parcels
22 of real estate, at a stated salary, or upon a commission, or upon a
23 salary and commission, or otherwise to sell real estate, or any parts
24 thereof, in lots or other parcels.

25 q. "Disability" means physical or sensory disability, infirmity,
26 malformation, or disfigurement which is caused by bodily injury,
27 birth defect, or illness including epilepsy and other seizure
28 disorders, and which shall include, but not be limited to, any degree
29 of paralysis, amputation, lack of physical coordination, blindness or
30 visual impairment, deafness or hearing impairment, muteness or
31 speech impairment, or physical reliance on a service or guide dog,
32 wheelchair, or other remedial appliance or device, or any mental,
33 psychological, or developmental disability, including autism
34 spectrum disorders, resulting from anatomical, psychological,
35 physiological, or neurological conditions which prevents the typical
36 exercise of any bodily or mental functions or is demonstrable,
37 medically or psychologically, by accepted clinical or laboratory
38 diagnostic techniques. Disability shall also mean AIDS or HIV
39 infection.

40 r. "Blind person" or "person who is blind" means any
41 individual whose central visual acuity does not exceed 20/200 in the
42 better eye with correcting lens or whose visual acuity is better than
43 20/200 if accompanied by a limit to the field of vision in the better
44 eye to such a degree that its widest diameter subtends an angle of
45 no greater than 20 degrees.

46 s. "Guide dog" means a dog used to assist persons who are
47 deaf, or which is fitted with a special harness so as to be suitable as
48 an aid to the mobility of a person who is blind, and is used by a

1 person who is blind and has satisfactorily completed a specific
2 course of training in the use of such a dog, and has been trained by
3 an organization generally recognized by agencies involved in the
4 rehabilitation of persons with disabilities, including, but not limited
5 to, those persons who are blind or deaf, as reputable and competent
6 to provide dogs with training of this type.

7 t. "Guide or service dog trainer" means any person who is
8 employed by an organization generally recognized by agencies
9 involved in the rehabilitation of persons with disabilities, including,
10 but not limited to, those persons who are blind, have visual
11 impairments, or are deaf or have hearing impairments, as reputable
12 and competent to provide dogs with training, as defined in this
13 section, and who is actually involved in the training process.

14 u. "Housing accommodation" means any publicly assisted
15 housing accommodation or any real property, or portion thereof,
16 which is used or occupied, or is intended, arranged, or designed to
17 be used or occupied, as the home, residence, or sleeping place of
18 one or more persons, but shall not include any single family
19 residence the occupants of which rent, lease, or furnish for
20 compensation not more than one room therein.

21 v. "Public facility" means any place of public accommodation
22 and any street, highway, sidewalk, walkway, public building, and
23 any other place or structure to which the general public is regularly,
24 normally, or customarily permitted or invited.

25 w. "Deaf person" or "person who is deaf" means any person
26 whose hearing is so severely impaired that the person is unable to
27 hear and understand conversational speech through the unaided ear
28 alone, and who must depend primarily on an assistive listening
29 device or visual communication such as writing, lip reading, sign
30 language, and gestures.

31 x. "Atypical hereditary cellular or blood trait" means sickle cell
32 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
33 fibrosis trait.

34 y. "Sickle cell trait" means the condition wherein the major
35 natural hemoglobin components present in the blood of the
36 individual are hemoglobin A (normal) and hemoglobin S (sickle
37 hemoglobin) as defined by standard chemical and physical analytic
38 techniques, including electrophoresis; and the proportion of
39 hemoglobin A is greater than the proportion of hemoglobin S or one
40 natural parent of the individual is shown to have only normal
41 hemoglobin components (hemoglobin A, hemoglobin A2,
42 hemoglobin F) in the normal proportions by standard chemical and
43 physical analytic tests.

44 z. "Hemoglobin C trait" means the condition wherein the major
45 natural hemoglobin components present in the blood of the
46 individual are hemoglobin A (normal) and hemoglobin C as defined
47 by standard chemical and physical analytic techniques, including
48 electrophoresis; and the proportion of hemoglobin A is greater than

1 the proportion of hemoglobin C or one natural parent of the
2 individual is shown to have only normal hemoglobin components
3 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
4 proportions by standard chemical and physical analytic tests.

5 aa. "Thalassemia trait" means the presence of the thalassemia
6 gene which in combination with another similar gene results in the
7 chronic hereditary disease Cooley's anemia.

8 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
9 which in combination with another similar gene results in the
10 chronic hereditary disease Tay-Sachs.

11 cc. "Cystic fibrosis trait" means the presence of the cystic
12 fibrosis gene which in combination with another similar gene
13 results in the chronic hereditary disease cystic fibrosis.

14 dd. "Service dog" means any dog individually trained to the
15 requirements of a person with a disability including, but not limited
16 to minimal protection work, rescue work, pulling a wheelchair or
17 retrieving dropped items. This term shall include a "seizure dog"
18 trained to alert or otherwise assist persons with epilepsy or other
19 seizure disorders.

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

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

25 gg. "HIV infection" means infection with the human
26 immunodeficiency virus or any other related virus identified as a
27 probable causative agent of AIDS.

28 hh. "Affectional or sexual orientation" means male or female
29 heterosexuality, homosexuality, or bisexuality by inclination,
30 practice, identity, or expression, having a history thereof or being
31 perceived, presumed, or identified by others as having such an
32 orientation.

33 ii. "Heterosexuality" means affectional, emotional, or physical
34 attraction or behavior which is primarily directed towards persons
35 of the other gender.

36 jj. "Homosexuality" means affectional, emotional, or physical
37 attraction or behavior which is primarily directed towards persons
38 of the same gender.

39 kk. "Bisexuality" means affectional, emotional, or physical
40 attraction or behavior which is directed towards persons of either
41 gender.

42 ll. "Familial status" means being the natural parent of a child,
43 the adoptive parent of a child, the resource family parent of a child,
44 having a "parent and child relationship" with a child as defined by
45 State law, or having sole or joint legal or physical custody, care,
46 guardianship, or visitation with a child, or any person who is
47 pregnant or is in the process of securing legal custody of any
48 individual who has not attained the age of 18 years.

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

2 (1) provided under any State program that the Attorney General
3 determines is specifically designed and operated to assist persons
4 who are elderly (as defined in the State program); or provided under
5 any federal program that the United States Department of Housing
6 and Urban Development determines is specifically designed and
7 operated to assist persons who are elderly (as defined in the federal
8 program); or

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

11 (3) intended and operated for occupancy by at least one person
12 55 years of age or older per unit. In determining whether housing
13 qualifies as housing for older persons under this paragraph, the
14 Attorney General shall adopt regulations which require at least the
15 following factors:

16 (a) the existence of significant facilities and services
17 specifically designed to meet the physical or social needs of older
18 persons, or if the provision of such facilities and services is not
19 practicable, that such housing is necessary to provide important
20 housing opportunities for older persons; and

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

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

26 Housing shall not fail to meet the requirements for housing for
27 older persons by reason of: persons residing in such housing as of
28 September 13, 1988 not meeting the age requirements of this
29 subsection, provided that new occupants of such housing meet the
30 age requirements of this subsection; or unoccupied units, provided
31 that such units are reserved for occupancy by persons who meet the
32 age requirements of this subsection.

33 nn. "Genetic characteristic" means any inherited gene or
34 chromosome, or alteration thereof, that is scientifically or medically
35 believed to predispose an individual to a disease, disorder, or
36 syndrome, or to be associated with a statistically significant
37 increased risk of development of a disease, disorder, or syndrome.

38 oo. "Genetic information" means the information about genes,
39 gene products, or inherited characteristics that may derive from an
40 individual or family member.

41 pp. "Genetic test" means a test for determining the presence or
42 absence of an inherited genetic characteristic in an individual,
43 including tests of nucleic acids such as DNA, RNA, and
44 mitochondrial DNA, chromosomes, or proteins in order to identify a
45 predisposing genetic characteristic.

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

1 rr. "Gender identity or expression" means having or being
2 perceived as having a gender related identity or expression whether
3 or not stereotypically associated with a person's assigned sex at
4 birth.

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

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

10 uu. "Premium benefit" means an employment benefit, such as
11 seniority, group life insurance, health insurance, disability
12 insurance, sick leave, annual leave, or an educational or pension
13 benefit that is greater than the employment benefit due the
14 employee for an equivalent period of work performed during the
15 regular work schedule of the employee.

16 vv. "Pregnancy" means pregnancy, childbirth, false pregnancy,
17 termination of pregnancy, or medical conditions related to
18 pregnancy or childbirth, including recovery from childbirth.

19 ww. "Breastfeeding" means breastfeeding, expressing milk for
20 breastfeeding, or medical conditions related to breastfeeding.

21 xx. "Health program or activity" means the provision or
22 administration of health-related services, health-related insurance
23 coverage, or other health-related coverage, and the provision of
24 assistance to individuals in obtaining health-related services or
25 health-related insurance coverage. For an entity principally
26 engaged in providing or administering health services or health
27 insurance coverage or other health coverage, all of its operations are
28 considered part of the health program or activity unless expressly
29 excluded pursuant to P.L.1945, c.169 (C.10:5-1 et seq.). Such
30 entities shall include a health care facility or long-term care facility
31 licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a
32 residential or community-based treatment facility, a health care
33 practice operated by a licensed or certified health care practitioner,
34 a health benefits plan or carrier, as those terms are defined in
35 section 2 of P.L.1997, c.192 (C.26:2S-2), or any similar entity, as
36 well as the operations of the State Medicaid and NJ FamilyCare
37 programs.

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

39

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

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

44 a. For an employer, because of the race, creed, color, national
45 origin, ancestry, age, marital status, civil union status, domestic
46 partnership status, affectional or sexual orientation, genetic
47 information, pregnancy **[or]** status, breastfeeding status, sex,
48 gender identity or expression, disability or atypical hereditary

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

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

44 For the purposes of this subsection, a "bona fide executive" is a
45 top level employee who exercises substantial executive authority
46 over a significant number of employees and a large volume of
47 business. A "high policy-making position" is a position in which a

1 person plays a significant role in developing policy and in
2 recommending the implementation thereof.

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

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

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

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

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

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

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

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

23 f. (1) For any owner, lessee, proprietor, manager,
24 superintendent, agent, or employee of any place of public
25 accommodation directly or indirectly to refuse, withhold from or
26 deny to any person any of the accommodations, advantages,
27 facilities or privileges thereof, or to discriminate against any person
28 in the furnishing thereof, or directly or indirectly to publish,
29 circulate, issue, display, post or mail any written or printed
30 communication, notice, or advertisement to the effect that any of
31 the accommodations, advantages, facilities, or privileges of any
32 such place will be refused, withheld from, or denied to any person
33 on account of the race, creed, color, national origin, ancestry,
34 marital status, civil union status, domestic partnership status,
35 pregnancy **【or】** status, breastfeeding status, sex, gender identity or
36 expression, affectional or sexual orientation, disability, liability for
37 service in the Armed Forces of the United States or nationality of
38 such person, or that the patronage or custom thereof of any person
39 of any particular race, creed, color, national origin, ancestry, marital
40 status, civil union status, domestic partnership status, pregnancy
41 **【or】** status, breastfeeding status, sex, gender identity or expression,
42 affectional or sexual orientation, disability, liability for service in
43 the Armed Forces of the United States or nationality is unwelcome,
44 objectionable or not acceptable, desired or solicited, and the
45 production of any such written or printed communication, notice or
46 advertisement, purporting to relate to any such place and to be made
47 by any owner, lessee, proprietor, superintendent or manager thereof,
48 shall be presumptive evidence in any action that the same was

1 authorized by such person; provided, however, that nothing
2 contained herein shall be construed to bar any place of public
3 accommodation which is in its nature reasonably restricted
4 exclusively to individuals of one sex, and which shall include but
5 not be limited to any summer camp, day camp, or resort camp,
6 bathhouse, dressing room, swimming pool, gymnasium, comfort
7 station, dispensary, clinic or hospital, or school or educational
8 institution which is restricted exclusively to individuals of one sex,
9 provided individuals shall be admitted based on their gender
10 identity or expression, from refusing, withholding from or denying
11 to any individual of the opposite sex any of the accommodations,
12 advantages, facilities or privileges thereof on the basis of sex;
13 provided further, that the foregoing limitation shall not apply to any
14 restaurant as defined in R.S.33:1-1 or place where alcoholic
15 beverages are served.

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

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

38 g. For any person, including but not limited to, any owner,
39 lessee, sublessee, assignee or managing agent of, or other person
40 having the right of ownership or possession of or the right to sell,
41 rent, lease, assign, or sublease any real property or part or portion
42 thereof, or any agent or employee of any of these:

43 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
44 to deny to or withhold from any person or group of persons any real
45 property or part or portion thereof because of race, creed, color,
46 national origin, ancestry, marital status, civil union status, domestic
47 partnership status, pregnancy **【or】** status, breastfeeding status, sex,
48 gender identity or expression, affectional or sexual orientation,

1 familial status, disability, liability for service in the Armed Forces
2 of the United States, nationality, or source of lawful income used
3 for rental or mortgage payments;

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

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

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

47 (5) To refuse to rent or lease any real property to another person
48 because that person's family includes children under 18 years of

1 age, or to make an agreement, rental or lease of any real property
2 which provides that the agreement, rental or lease shall be rendered
3 null and void upon the birth of a child. This paragraph shall not
4 apply to housing for older persons as defined in subsection mm. of
5 section 5 of P.L.1945, c.169 (C.10:5-5).

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

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

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

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

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

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

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

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

39 (1) To discriminate against any person or group of persons
40 because of race, creed, color, national origin, ancestry, marital
41 status, civil union status, domestic partnership status, pregnancy
42 **[or]** status, breastfeeding status, sex, gender identity or expression,
43 affectional or sexual orientation, disability, liability for service in
44 the Armed Forces of the United States, familial status or nationality,
45 in the granting, withholding, extending, modifying, renewing, or
46 purchasing, or in the fixing of the rates, terms, conditions or
47 provisions of any such loan, extension of credit or financial

1 assistance or purchase thereof or in the extension of services in
2 connection therewith;

3 (2) To use any form of application for such loan, extension of
4 credit or financial assistance or to make record or inquiry in
5 connection with applications for any such loan, extension of credit
6 or financial assistance which expresses, directly or indirectly, any
7 limitation, specification or discrimination as to race, creed, color,
8 national origin, ancestry, marital status, civil union status, domestic
9 partnership status, pregnancy **【or】** status, breastfeeding status, sex,
10 gender identity or expression, affectional or sexual orientation,
11 disability, liability for service in the Armed Forces of the United
12 States, familial status or nationality or any intent to make any such
13 limitation, specification or discrimination; unless otherwise
14 required by law or regulation to retain or use such information;

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

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

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

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

31 k. For any real estate broker, real estate salesperson or
32 employee or agent thereof or any other individual, corporation,
33 partnership, or organization, for the purpose of inducing a
34 transaction for the sale or rental of real property from which
35 transaction such person or any of its members may benefit
36 financially, to represent that a change has occurred or will or may
37 occur in the composition with respect to race, creed, color, national
38 origin, ancestry, marital status, civil union status, domestic
39 partnership status, familial status, pregnancy **【or】** status,
40 breastfeeding status, sex, gender identity or expression, affectional
41 or sexual orientation, disability, liability for service in the Armed
42 Forces of the United States, nationality, or source of lawful income
43 used for rental or mortgage payments of the owners or occupants in
44 the block, neighborhood or area in which the real property is
45 located, and to represent, directly or indirectly, that this change will
46 or may result in undesirable consequences in the block,
47 neighborhood or area in which the real property is located,
48 including, but not limited to the lowering of property values, an

1 increase in criminal or anti-social behavior, or a decline in the
2 quality of schools or other facilities.

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

20 m. For any person to:

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

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

40 The provisions of this subsection shall not apply to any letter of
41 credit, contract, or other document which contains any provision
42 pertaining to employee-employer collective bargaining, a labor
43 dispute or an unfair labor practice, or made in connection with the
44 protest of unlawful discrimination or an unlawful employment
45 practice, if the other provisions of such letter of credit, contract, or
46 other document do not otherwise violate the provisions of this
47 subsection.

1 n. For any person to aid, abet, incite, compel, coerce, or induce
2 the doing of any act forbidden by subsections l. and m. of section
3 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
4 do so. Such prohibited conduct shall include, but not be limited to:

5 (1) Buying from, selling to, leasing from or to, licensing,
6 contracting with, trading with, providing goods, services, or
7 information to, or otherwise doing business with any person
8 because that person does, or agrees or attempts to do, any such act
9 or any act prohibited by this subsection; or

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

19 o. For any multiple listing service, real estate brokers'
20 organization or other service, organization or facility related to the
21 business of selling or renting dwellings to deny any person access
22 to or membership or participation in such organization, or to
23 discriminate against such person in the terms or conditions of such
24 access, membership, or participation, on account of race, creed,
25 color, national origin, ancestry, age, marital status, civil union
26 status, domestic partnership status, familial status, pregnancy **[or]**
27 status, breastfeeding status, sex, gender identity or expression,
28 affectional or sexual orientation, disability, liability for service in
29 the Armed Forces of the United States or nationality.

30 p. Nothing in the provisions of this section shall affect the
31 ability of an employer to require employees to adhere to reasonable
32 workplace appearance, grooming and dress standards not precluded
33 by other provisions of State or federal law, except that an employer
34 shall allow an employee to appear, groom and dress consistent with
35 the employee's gender identity or expression.

36 q. (1) For any employer to impose upon a person as a
37 condition of obtaining or retaining employment, including
38 opportunities for promotion, advancement or transfers, any terms or
39 conditions that would require a person to violate or forego a
40 sincerely held religious practice or religious observance, including
41 but not limited to the observance of any particular day or days or
42 any portion thereof as a Sabbath or other holy day in accordance
43 with the requirements of the religion or religious belief, unless,
44 after engaging in a bona fide effort, the employer demonstrates that
45 it is unable to reasonably accommodate the employee's religious
46 observance or practice without undue hardship on the conduct of the
47 employer's business. Notwithstanding any other provision of law to
48 the contrary, an employee shall not be entitled to premium wages or

1 premium benefits for work performed during hours to which those
2 premium wages or premium benefits would ordinarily be
3 applicable, if the employee is working during those hours only as an
4 accommodation to his religious requirements. Nothing in this
5 subsection q. shall be construed as reducing:

6 (a) The number of the hours worked by the employee which are
7 counted towards the accruing of seniority, pension or other benefits;
8 or

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

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

27 (3) (a) For purposes of this subsection q., "undue hardship"
28 means an accommodation requiring unreasonable expense or
29 difficulty, unreasonable interference with the safe or efficient
30 operation of the workplace or a violation of a bona fide seniority
31 system or a violation of any provision of a bona fide collective
32 bargaining agreement.

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

35 (i) The identifiable cost of the accommodation, including the
36 costs of loss of productivity and of retaining or hiring employees or
37 transferring employees from one facility to another, in relation to
38 the size and operating cost of the employer.

39 (ii) The number of individuals who will need the particular
40 accommodation for a sincerely held religious observance or
41 practice.

42 (iii) For an employer with multiple facilities, the degree to
43 which the geographic separateness or administrative or fiscal
44 relationship of the facilities will make the accommodation more
45 difficult or expensive.

46 (c) An accommodation shall be considered to constitute an
47 undue hardship if it will result in the inability of an employee to

1 perform the essential functions of the position in which he or she is
2 employed.

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

7 (ii) This subsection q. shall not apply where the uniform
8 application of terms and conditions of attendance to employees is
9 essential to prevent undue hardship to the employer. The burden of
10 proof regarding the applicability of this subparagraph (d) shall be
11 upon the employer.

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

30 s. For an employer to treat, for employment-related purposes, a
31 woman employee that the employer knows, or should know, is
32 affected by pregnancy or breastfeeding in a manner less favorable
33 than the treatment of other persons not affected by pregnancy or
34 breastfeeding but similar in their ability or inability to work. In
35 addition, an employer of an employee who is a woman affected by
36 pregnancy shall make available to the employee reasonable
37 accommodation in the workplace, such as bathroom breaks, breaks
38 for increased water intake, periodic rest, assistance with manual
39 labor, job restructuring or modified work schedules, and temporary
40 transfers to less strenuous or hazardous work, for needs related to
41 the pregnancy when the employee, based on the advice of her
42 physician, requests the accommodation, and, in the case of a
43 employee breast feeding her infant child, the accommodation shall
44 include reasonable break time each day to the employee and a
45 suitable room or other location with privacy, other than a toilet stall,
46 in close proximity to the work area for the employee to express
47 breast milk for the child, unless the employer can demonstrate that
48 providing the accommodation would be an undue hardship on the

1 business operations of the employer. The employer shall not in any
2 way penalize the employee in terms, conditions or privileges of
3 employment for requesting or using the accommodation. Workplace
4 accommodation provided pursuant to this subsection and paid or
5 unpaid leave provided to an employee affected by pregnancy or
6 breastfeeding shall not be provided in a manner less favorable than
7 accommodations or leave provided to other employees not affected
8 by pregnancy or breastfeeding but similar in their ability or inability
9 to work. This subsection shall not be construed as otherwise
10 increasing or decreasing any employee's rights under law to paid or
11 unpaid leave in connection with pregnancy or breastfeeding.

12 **【For the purposes of this section "pregnancy or breastfeeding"**
13 **means pregnancy, childbirth, and breast feeding or expressing milk**
14 **for breastfeeding, or medical conditions related to pregnancy,**
15 **childbirth, or breastfeeding, including recovery from childbirth.】**

16 For the purposes of this subsection, in determining whether an
17 accommodation would impose undue hardship on the operation of
18 an employer's business, the factors to be considered include: the
19 overall size of the employer's business with respect to the number
20 of employees, number and type of facilities, and size of budget; the
21 type of the employer's operations, including the composition and
22 structure of the employer's workforce; the nature and cost of the
23 accommodation needed, taking into consideration the availability of
24 tax credits, tax deductions, and outside funding; and the extent to
25 which the accommodation would involve waiver of an essential
26 requirement of a job as opposed to a tangential or non-business
27 necessity requirement.

28 t. For an employer to pay any of its employees who is a
29 member of a protected class at a rate of compensation, including
30 benefits, which is less than the rate paid by the employer to
31 employees who are not members of the protected class for
32 substantially similar work, when viewed as a composite of skill,
33 effort and responsibility. An employer who is paying a rate of
34 compensation in violation of this subsection shall not reduce the
35 rate of compensation of any employee in order to comply with this
36 subsection. An employer may pay a different rate of compensation
37 only if the employer demonstrates that the differential is made
38 pursuant to a seniority system, a merit system, or the employer
39 demonstrates:

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

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

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

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

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

8 Comparisons of wage rates shall be based on wage rates in all of
9 an employer's operations or facilities. For the purposes of this
10 subsection, "member of a protected class" means an employee who
11 has one or more characteristics, including race, creed, color,
12 national origin, nationality, ancestry, age, marital status, civil union
13 status, domestic partnership status, affectional or sexual orientation,
14 genetic information, pregnancy, breastfeeding, sex, gender identity
15 or expression, disability or atypical hereditary cellular or blood trait
16 of any individual, or liability for service in the armed forces, for
17 which subsection a. of this section prohibits an employer from
18 refusing to hire or employ or barring or discharging or requiring to
19 retire from employment or discriminating against the individual in
20 compensation or in terms, conditions or privileges of employment.

21 u. To engage in any unlawful employment practice or unlawful
22 discrimination, as set forth in the "Law Against Discrimination,"
23 P.L.1945, c.169 (C.10:5-1 et seq.), against an individual on the
24 basis of the race, creed, color, national origin, nationality, ancestry,
25 age, marital status, civil union status, domestic partnership status,
26 affectional or sexual orientation, genetic information, pregnancy
27 status, breastfeeding status, sex, gender identity or expression,
28 disability or atypical hereditary cellular or blood trait of any
29 individual, or liability for service in the armed forces of another
30 individual with whom the individual is known or believed to have a
31 relationship or association.

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

33

34 4. This act shall take effect 180 days after the date of
35 enactment.

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STATEMENT

39

40 This bill expands the "Law Against Discrimination" (LAD),
41 P.L.1945, c.169 (C.10:5-1 et seq.), to apply to health programs and
42 activities, which are defined in the bill to mean the provision or
43 administration of health-related services, health-related insurance
44 coverage or other health-related coverage, and the provision of
45 assistance to individuals in obtaining health-related services or
46 health-related insurance coverage. The entities the bill will apply to
47 include, but are not limited to, health care facilities, long-term care
48 facilities, residential and community-based treatment facilities, and

1 health care practices operated by a licensed or certified health care
2 practitioner, as well as health benefits plans, health benefits
3 carriers, and the State Medicaid and NJ FamilyCare programs.

4 The LAD generally prohibits discrimination in the workplace, in
5 places of public accommodation, and in transactions involving
6 housing and other real property against an individual based on the
7 individual being a member of a protected class, including race,
8 creed, color, national origin, nationality, ancestry, age, marital
9 status, civil union status, domestic partnership status, affectional or
10 sexual orientation, genetic information, pregnancy status,
11 breastfeeding status, sex, gender identity or expression, disability or
12 atypical hereditary cellular or blood trait of any individual, or
13 liability for service in the armed forces. In some cases, the LAD
14 provides broad protections for all protected classes; in other cases,
15 it provides specific protections to specific populations, such as
16 workplace protections for women who are pregnant or breastfeeding
17 or for individuals to practice religious observances.

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

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

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

27 (3) utilize criteria or methods of administration that have the
28 effect of discriminating on the basis of sex or, when making
29 selections when determining the site or location of a facility, have
30 the effect of excluding individuals from or denying them the
31 benefits of, or otherwise discriminating on the basis of sex;

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

34 (5) fail to ensure that communications with individuals with
35 disabilities, including but not limited to individuals who are deaf or
36 hard of hearing, are as effective as communications with others in
37 the health program or activity and sufficient to ensure those
38 individuals an equal opportunity to participate in, and enjoy the
39 benefits of, the health program or activity;

40 (6) fail to ensure that, when newly constructing or making
41 alterations to all or part of a facility, the affected portions of the
42 facility are accessible to individuals with disabilities, consistent
43 with the current applicable standards for accessible design adopted
44 pursuant to the "Americans with Disabilities Act of 1990";

45 (7) fail to ensure that any health programs or activities provided
46 through electronic and information technology are accessible to
47 individuals with disabilities, unless doing so would result in undue

1 financial and administrative burdens or a fundamental alteration in
2 the nature of the health program or activity;

3 (8) fail to make reasonable accommodations and modifications
4 to policies, practices, or procedures when necessary to grant an
5 individual with a disability an equal opportunity to participate in,
6 and enjoy the benefits of, the health program or activity, unless the
7 entity demonstrates that making the accommodations or
8 modifications would be an undue burden or would fundamentally
9 alter the nature of the health program or activity;

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

12 (10) fail to take reasonable steps to provide meaningful access to
13 individuals with limited English proficiency who are eligible to
14 receive the benefits or services of the health program or activity,
15 including providing appropriate interpretation and translation services
16 for oral and written communications, which may be provided in-
17 person or electronically.

18 The bill provides that it is unlawful discrimination for any entity
19 providing or administering a health benefits plan to discriminate
20 against any individual on the basis of the individual being a member
21 of a protected class, including: denying, canceling, limiting, or
22 refusing to issue or renew a health benefits plan; denying or
23 limiting coverage of a claim; imposing additional cost sharing or
24 other limitations on coverage; having or implementing marketing
25 practices or benefit designs that discriminate on the basis of any
26 protected class; having or implementing a categorical coverage
27 exclusion or limitation for all health services related to gender
28 transition; or otherwise engaging in practices that discriminate
29 against any transgender individual.

30 Nothing in the bill will be construed to abrogate the provisions
31 of P.L.1974, c.111 (C.2A:65A-1 et seq.) or 42 U.S.C. s.300a-7 et
32 seq., which provide that no individual or health care facility may be
33 required to provide abortion or sterilization services or procedures.

34 Each entity that operates a health program or activity will be
35 required to provide notice to beneficiaries, enrollees, applicants,
36 and members of the public that: the entity does not discriminate on
37 the basis of any protected class; and the entity complies with the
38 other provisions of the “Law Against Discrimination.”

39 This notice is to be posted in a conspicuous physical location
40 where the entity interacts with the public and in a conspicuous
41 location on the entity’s web site, and must include taglines in the 10
42 most common non-English languages spoken in the State.

43 The bill further prohibits any act of unlawful discrimination or
44 any unlawful employment practice when taken against an individual
45 based on the individual’s association with a member of any
46 protected class.