

ASSEMBLY, No. 432

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KELLY and Assemblywoman WRIGHT

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

2

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

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

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

10 a. For an employer, because of the race, creed, color, national
11 origin, ancestry, age, marital status, affectional or sexual orientation,
12 sex or atypical hereditary cellular or blood trait of any individual, or
13 because of the liability for service in the Armed Forces of the United
14 States or the nationality of any individual, to refuse to hire or employ
15 or to bar or to discharge or require to retire, unless justified by lawful
16 considerations other than age, from employment such individual or to
17 discriminate against such individual in compensation or in terms,
18 conditions or privileges of employment; provided, however, it shall not
19 be an unlawful employment practice to refuse to accept for
20 employment an applicant who has received a notice of induction or
21 orders to report for active duty in the armed forces; provided further
22 that nothing herein contained shall be construed to bar an employer
23 from refusing to accept for employment any person on the basis of sex
24 in those certain circumstances where sex is a bona fide occupational
25 qualification, reasonably necessary to the normal operation of the
26 particular business or enterprise; provided further that nothing herein
27 contained shall be construed to bar an employer from refusing to
28 accept for employment or to promote any person over 70 years of age;
29 provided further that it shall not be an unlawful employment practice
30 for a club exclusively social or fraternal to use club membership as a
31 uniform qualification for employment, or for a religious association or
32 organization to utilize religious affiliation as a uniform qualification in

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

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

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

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

36 c. For any employer or employment agency to print or circulate or
37 cause to be printed or circulated any statement, advertisement or
38 publication, or to use any form of application for employment, or to
39 make an inquiry in connection with prospective employment, which
40 expresses, directly or indirectly, any limitation, specification or
41 discrimination as to race, creed, color, national origin, ancestry, age,
42 marital status, affectional or sexual orientation or sex or liability of any
43 applicant for employment for service in the Armed Forces of the
44 United States, or any intent to make any such limitation, specification
45 or discrimination, unless based upon a bona fide occupational
46 qualification.

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

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

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

43 (2) For any owner, lessee, proprietor, manager, superintendent,
44 agent, or employee of any private club or association to directly or
45 indirectly refuse, withhold from or deny to any individual who has
46 been accepted as a club member and has contracted for or is otherwise

1 entitled to full club membership any of the accommodations,
2 advantages, facilities or privileges thereof, or to discriminate against
3 any person in the furnishing thereof on account of the race, creed,
4 color, national origin, ancestry, marital status, sex, affectional or
5 sexual orientation or nationality of such person.

6 g. For the owner, lessee, sublessee, assignee or managing agent of,
7 or other person having the right of ownership or possession of or the
8 right to sell, rent, lease, assign, or sublease any real property or part
9 or portion thereof, or any agent or employee of any of these:

10 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
11 to deny to or withhold from any person or group of persons any real
12 property or part or portion thereof because of the race, creed, color,
13 national origin, ancestry, marital status, affectional or sexual
14 orientation, familial status or nationality of such person or group of
15 persons;

16 (2) To discriminate against any person or group of persons
17 because of the race, creed, color, national origin, marital status, sex,
18 affectional or sexual orientation or familial status of such person or
19 group of persons in the terms, conditions or privileges of the sale,
20 rental or lease of any real property or part or portion thereof or in the
21 furnishing of facilities or services in connection therewith; or

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

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

46 (1) To refuse to sell, rent, assign, lease or sublease, or offer for

1 sale, rental, lease, assignment, or sublease any real property or part or
2 portion thereof to any person or group of persons or to refuse to
3 negotiate for the sale, rental, lease, assignment, or sublease of any real
4 property or part or portion thereof to any person or group of persons
5 because of the race, creed, color, national origin, ancestry, marital
6 status, familial status, sex, affectional or sexual orientation or
7 nationality of such person or group of persons, or to represent that any
8 real property or portion thereof is not available for inspection, sale,
9 rental, lease, assignment, or sublease when in fact it is so available, or
10 otherwise to deny or withhold any real property or any part or portion
11 of facilities thereof to or from any person or group of persons because
12 of the race, creed, color, national origin, ancestry, marital status,
13 familial status, sex, affectional or sexual orientation or nationality of
14 such person or group of persons;

15 (2) To discriminate against any person because of his race, creed,
16 color, national origin, ancestry, marital status, familial status, sex or
17 affectional or sexual orientation in the terms, conditions or privileges
18 of the sale, rental, lease, assignment or sublease of any real property
19 or part or portion thereof or in the furnishing of facilities or services
20 in connection therewith; or

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

43 i. For any person, bank, banking organization, mortgage company,
44 insurance company or other financial institution, lender or credit
45 institution to whom application is made for any loan or extension of
46 credit including but not limited to an application for financial

1 assistance for the purchase, acquisition, construction, rehabilitation,
2 repair or maintenance of any real property or part or portion thereof
3 or any agent or employee thereof:

4 (1) To discriminate against any person or group of persons because
5 of the race, creed, color, national origin, ancestry, marital status, sex,
6 affectional or sexual orientation or nationality of such person or group
7 of persons or of the prospective occupants or tenants of such real
8 property or part or portion thereof, in the granting, withholding,
9 extending, modifying or renewing, or in the fixing of the rates, terms,
10 conditions or provisions of any such loan, extension of credit or
11 financial assistance or in the extension of services in connection
12 therewith; or

13 (2) To use any form of application for such loan, extension of
14 credit or financial assistance or to make record or inquiry in
15 connection with applications for any such loan, extension of credit or
16 financial assistance which expresses, directly or indirectly, any
17 limitation, specification or discrimination as to race, creed, color,
18 national origin, ancestry, marital status, sex, affectional or sexual
19 orientation or nationality or any intent to make any such limitation,
20 specification or discrimination; unless otherwise required by law or
21 regulation to retain or use such information; or

22 (3) To discriminate on the basis of familial status in any manner
23 described in paragraph (1) or (2) of this subsection with respect to any
24 real property.

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

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

44 l. For any person to refuse to buy from, sell to, lease from or to,
45 license, contract with, or trade with, provide goods, services or
46 information to, or otherwise do business with any other person on the

1 basis of the race, creed, color, national origin, ancestry, age, sex,
2 affectional or sexual orientation, marital status, liability for service in
3 the Armed Forces of the United States, or nationality of such other
4 person or of such other person's spouse, partners, members,
5 stockholders, directors, officers, managers, superintendents, agents,
6 employees, business associates, suppliers, or customers. This
7 subsection shall not prohibit refusals or other actions (1) pertaining to
8 employee-employer collective bargaining, labor disputes, or unfair
9 labor practices, or (2) made or taken in connection with a protest of
10 unlawful discrimination or unlawful employment practices.

11 m. For any person to:

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

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

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

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

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

44 (2) Boycotting, commercially blacklisting or refusing to buy from,
45 sell to, lease from or to, license, contract with, provide goods, services
46 or information to, or otherwise do business with any person because

1 that person has not done or refuses to do any such act or any act
2 prohibited by this subsection n.; provided that this subsection n. shall
3 not prohibit refusals or other actions either pertaining to
4 employee-employer collective bargaining, labor disputes, or unfair
5 labor practices, or made or taken in connection with a protest of
6 unlawful discrimination or unlawful employment practices.

7 (cf: P.L.1992, c.146, s.9)

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9 2. This act shall take effect immediately.

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STATEMENT

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14 This bill amends the "Law Against Discrimination" (LAD),
15 P.L.1945, c.169 (C.10:5-1 et seq.) to provide that once an individual
16 has been admitted to a private club, then club privileges and benefits
17 may not be withheld from that club member on the basis of race, creed,
18 color, national origin, ancestry, marital status, sex, affectional or
19 sexual orientation or nationality.

20 Currently, only clubs that are considered public accommodations
21 are subject to the anti-discrimination provisions of the LAD.
22 Distinctly private clubs, such as a club open only to members of a
23 particular volunteer firefighters organization, are not subject to the
24 LAD. A "loophole" therefore exists which would allow a private club
25 to discriminate against its own members, after admitting them to the
26 club. For example, it has been reported that some golf clubs are
27 assigning unfavorable tee times for female members, while reserving
28 preferential tee times for male members of the clubs. The bill would
29 prohibit this behavior, and any other type of discrimination which is
30 prohibited when carried out by a public accommodation.

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35 Prohibits clubs from discriminating against members in certain cases.