

[First Reprint]
ASSEMBLY, No. 432

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KELLY, Assemblywoman WRIGHT,
Assemblyman Doria, Assemblywoman Turner,
Assemblymen Dalton, Cohen, Impreduto, Jones,
Assemblywoman Vandervalk, Assemblyman Zisa,
Assemblywomen Gill, Quigley, Weinberg, Crecco,
Assemblymen O'Toole and DiGaetano

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted September 19, 1996.

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

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

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

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

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

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

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

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

1 as defined in R.S.33:1-1 or place where alcoholic beverages are
2 served.

3 (2) ¹[For] Notwithstanding the definition of "public accomodation"
4 as set forth in subsection l. of section 4 of P.L.1945, c.169 (C.10:5-5),
5 for¹ any owner, lessee, proprietor, manager, superintendent, agent, or
6 employee of any private club or association to directly or indirectly
7 refuse, withhold from or deny to any individual who has been accepted
8 as a club member and has contracted for or is otherwise entitled to full
9 club membership any of the accommodations, advantages, facilities or
10 privileges thereof, or to discriminate against any ¹[person] member¹
11 in the furnishing thereof on account of the race, creed, color, national
12 origin, ancestry, marital status, sex, affectional or sexual orientation
13 or nationality of such person.

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

18 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
19 to deny to or withhold from any person or group of persons any real
20 property or part or portion thereof because of the race, creed, color,
21 national origin, ancestry, marital status, affectional or sexual
22 orientation, familial status or nationality of such person or group of
23 persons;

24 (2) To discriminate against any person or group of persons
25 because of the race, creed, color, national origin, marital status, sex,
26 affectional or sexual orientation or familial status of such person or
27 group of persons in the terms, conditions or privileges of the sale,
28 rental or lease of any real property or part or portion thereof or in the
29 furnishing of facilities or services in connection therewith; or

30 (3) To print, publish, circulate, issue, display, post or mail, or
31 cause to be printed, published, circulated, issued, displayed, posted or
32 mailed any statement, advertisement, publication or sign, or to use any
33 form of application for the purchase, rental, lease, assignment or
34 sublease of any real property or part or portion thereof, or to make
35 any record or inquiry in connection with the prospective purchase,
36 rental, lease, assignment, or sublease of any real property, or part or
37 portion thereof which expresses, directly or indirectly, any limitation,
38 specification or discrimination as to race, creed, color, national origin,
39 ancestry, marital status, sex, affectional or sexual orientation, familial
40 status or nationality, or any intent to make any such limitation,
41 specification or discrimination, and the production of any such
42 statement, advertisement, publicity, sign, form of application, record,
43 or inquiry purporting to be made by any such person shall be
44 presumptive evidence in any action that the same was authorized by
45 such person; provided, however, that nothing contained in this
46 subsection shall be construed to bar any person from refusing to sell,

1 rent, lease, assign or sublease or from advertising or recording a
2 qualification as to sex for any room, apartment, flat in a dwelling or
3 residential facility which is planned exclusively for and occupied by
4 individuals of one sex to any individual of the exclusively opposite sex
5 on the basis of sex.

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 or
10 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 real
12 property or part or portion thereof to any person or group of persons
13 because of the race, creed, color, national origin, ancestry, marital
14 status, familial status, sex, affectional or sexual orientation or
15 nationality of such person or group of persons, or to represent that any
16 real property or portion thereof is not available for inspection, sale,
17 rental, lease, assignment, or sublease when in fact it is so available, or
18 otherwise to deny or withhold any real property or any part or portion
19 of facilities thereof to or from any person or group of persons because
20 of the race, creed, color, national origin, ancestry, marital status,
21 familial status, sex, affectional or sexual orientation or nationality of
22 such person or group of persons;

23 (2) To discriminate against any person because of his race, creed,
24 color, national origin, ancestry, marital status, familial status, sex or
25 affectional or sexual orientation in the terms, conditions or privileges
26 of the sale, rental, lease, assignment or sublease of any real property
27 or part or portion thereof or in the furnishing of facilities or services
28 in connection therewith; or

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

1 qualification as to sex for any room, apartment, flat in a dwelling or
2 residential facility which is planned exclusively for and occupied
3 exclusively by individuals of one sex to any individual of the opposite
4 sex on the basis of sex.

5 i. For any person, bank, banking organization, mortgage company,
6 insurance company or other financial institution, lender or credit
7 institution to whom application is made for any loan or extension of
8 credit including but not limited to an application for financial
9 assistance for the purchase, acquisition, construction, rehabilitation,
10 repair or maintenance of any real property or part or portion thereof
11 or any agent or employee thereof:

12 (1) To discriminate against any person or group of persons because
13 of the race, creed, color, national origin, ancestry, marital status, sex,
14 affectional or sexual orientation or nationality of such person or group
15 of persons or of the prospective occupants or tenants of such real
16 property or part or portion thereof, in the granting, withholding,
17 extending, modifying or renewing, or in the fixing of the rates, terms,
18 conditions or provisions of any such loan, extension of credit or
19 financial assistance or in the extension of services in connection
20 therewith; or

21 (2) To use any form of application for such loan, extension of
22 credit or financial assistance or to make record or inquiry in
23 connection with applications for any such loan, extension of credit or
24 financial assistance which expresses, directly or indirectly, any
25 limitation, specification or discrimination as to race, creed, color,
26 national origin, ancestry, marital status, sex, affectional or sexual
27 orientation or nationality or any intent to make any such limitation,
28 specification or discrimination; unless otherwise required by law or
29 regulation to retain or use such information; or

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

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

37 k. For any real estate broker, real estate salesperson or employee
38 or agent thereof or any other individual, corporation, partnership, or
39 organization, for the purpose of inducing a transaction for the sale or
40 rental of real property from which transaction such person or any of
41 its members may benefit financially, to represent that a change has
42 occurred or will or may occur in the composition with respect to race,
43 creed, color, national origin, ancestry, marital status, familial status,
44 sex, affectional or sexual orientation or nationality of the owners or
45 occupants in the block, neighborhood or area in which the real
46 property is located, and to represent, directly or indirectly, that this

1 change will or may result in undesirable consequences in the block,
2 neighborhood or area in which the real property is located, including,
3 but not limited to the lowering of property values, an increase in
4 criminal or anti-social behavior, or a decline in the quality of schools
5 or other facilities.

6 1. For any person to refuse to buy from, sell to, lease from or to,
7 license, contract with, or trade with, provide goods, services or
8 information to, or otherwise do business with any other person on the
9 basis of the race, creed, color, national origin, ancestry, age, sex,
10 affectional or sexual orientation, marital status, liability for service in
11 the Armed Forces of the United States, or nationality of such other
12 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 to
16 employee-employer collective bargaining, labor disputes, or unfair
17 labor practices, or (2) made or taken in connection with a protest of
18 unlawful discrimination or unlawful employment practices.

19 m. For any person to:

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

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

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

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

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

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

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

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17 2. This act shall take effect immediately.

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22 Prohibits clubs from discriminating against members in certain cases.