

[Passed Both Houses]

[Third Reprint]

ASSEMBLY, No. 432

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# STATE OF NEW JERSEY

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PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KELLY, Assemblywoman WRIGHT,  
Assemblyman Doria, Assemblywoman Turner, Assemblymen  
Dalton, Cohen, Impreveduto, Jones, Assemblywoman  
Vandervalk, Assemblyman Zisa, Assemblywomen Gill,  
Quigley, Weinberg, Crecco, Assemblymen O'Toole,  
DiGaetano, Senators Singer, Bark, Cafiero and Baer

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

2

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

5

6 1. Section 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 <sup>3</sup>genetic information,<sup>3</sup> sex or atypical hereditary cellular or blood trait  
13 of any individual, or because of the liability for service in the Armed  
14 Forces of the United States or the nationality of any individual, <sup>3</sup>or  
15 because of the refusal to submit to a genetic test or make available the  
16 results of a genetic test to an employer,<sup>3</sup> to refuse to hire or employ  
17 or to bar or to discharge or require to retire, unless justified by lawful  
18 considerations other than age, from employment such individual or to  
19 discriminate against such individual in compensation or in terms,  
20 conditions or privileges of employment; provided, however, it shall not  
21 be an unlawful employment practice to refuse to accept for  
22 employment an applicant who has received a notice of induction or

**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:

<sup>1</sup> Assembly AJU committee amendments adopted September 19, 1996.

<sup>2</sup> Assembly floor amendments adopted October 21, 1996.

<sup>3</sup> Senate SJU committee amendments adopted May 8, 1997.

1 orders to report for active duty in the armed forces; provided further  
2 that nothing herein contained shall be construed to bar an employer  
3 from refusing to accept for employment any person on the basis of sex  
4 in those certain circumstances where sex is a bona fide occupational  
5 qualification, reasonably necessary to the normal operation of the  
6 particular business or enterprise; provided further that nothing herein  
7 contained shall be construed to bar an employer from refusing to  
8 accept for employment or to promote any person over 70 years of age;  
9 provided further that it shall not be an unlawful employment practice  
10 for a club exclusively social or fraternal to use club membership as a  
11 uniform qualification for employment, or for a religious association or  
12 organization to utilize religious affiliation as a uniform qualification in  
13 the employment of clergy, religious teachers or other employees  
14 engaged in the religious activities of the association or organization,  
15 or in following the tenets of its religion in establishing and utilizing  
16 criteria for employment of an employee; provided further, that it shall  
17 not be an unlawful employment practice to require the retirement of  
18 any employee who, for the two-year period immediately before  
19 retirement, is employed in a bona fide executive or a high  
20 policy-making position, if that employee is entitled to an immediate  
21 non-forfeitable annual retirement benefit from a pension, profit  
22 sharing, savings or deferred retirement plan, or any combination of  
23 those plans, of the employer of that employee which equals in the  
24 aggregate at least \$27,000.00; and provided further that an employer  
25 may restrict employment to citizens of the United States where such  
26 restriction is required by federal law or is otherwise necessary to  
27 protect the national interest.

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

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

1 particular apprentice or other training program.

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

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

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

1 pool, gymnasium, comfort station, dispensary, clinic or hospital, or  
2 school or educational institution which is restricted exclusively to  
3 individuals of one sex, from refusing, withholding from or denying to  
4 any individual of the opposite sex any of the accommodations,  
5 advantages, facilities or privileges thereof on the basis of sex; provided  
6 further, that the foregoing limitation shall not apply to any restaurant  
7 as defined in R.S.33:1-1 or place where alcoholic beverages are  
8 served.

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

21 <sup>2</sup>In addition to the penalties otherwise provided for a violation of  
22 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2) of  
23 subsection f. of this section is the holder of an alcoholic beverage  
24 license issued under the provisions of R.S.33:1-12 <sup>3</sup>[that license, for  
25 a first offense, shall be suspended by] for that private club or  
26 association, the matter shall be referred to<sup>3</sup> the Director of the  
27 Division of Alcoholic <sup>3</sup>[Beverages for a period of not less than 15  
28 days or more than 60 days and, for a second offense, shall be revoked  
29 by the director and the licensed premises ineligible for any license  
30 issued under the provisions of chapter 1 of Title 33 of the Revised  
31 Statutes for a period of no less than two years following the date of  
32 the revocation. A suspension or revocation authorized under this  
33 paragraph shall be effectuated] Beverage Control who shall impose an  
34 appropriate penalty<sup>3</sup> in accordance with the procedures set forth in  
35 R.S.33:1-31.<sup>2</sup>

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

40 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise  
41 to deny to or withhold from any person or group of persons any real  
42 property or part or portion thereof because of the race, creed, color,  
43 national origin, ancestry, marital status, affectional or sexual  
44 orientation, familial status or nationality of such person or group of  
45 persons;

46 (2) To discriminate against any person or group of persons

1 because of the race, creed, color, national origin, marital status, sex,  
2 affectional or sexual orientation or familial status of such person or  
3 group of persons in the terms, conditions or privileges of the sale,  
4 rental or lease of any real property or part or portion thereof or in the  
5 furnishing of facilities or services in connection therewith; or

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

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

30 (1) To refuse to sell, rent, assign, lease or sublease, or offer for  
31 sale, rental, lease, assignment, or sublease any real property or part or  
32 portion thereof to any person or group of persons or to refuse to  
33 negotiate for the sale, rental, lease, assignment, or sublease of any real  
34 property or part or portion thereof to any person or group of persons  
35 because of the race, creed, color, national origin, ancestry, marital  
36 status, familial status, sex, affectional or sexual orientation or  
37 nationality of such person or group of persons, or to represent that any  
38 real property or portion thereof is not available for inspection, sale,  
39 rental, lease, assignment, or sublease when in fact it is so available, or  
40 otherwise to deny or withhold any real property or any part or portion  
41 of facilities thereof to or from any person or group of persons because  
42 of the race, creed, color, national origin, ancestry, marital status,  
43 familial status, sex, affectional or sexual orientation or nationality of  
44 such person or group of persons;

45 (2) To discriminate against any person because of his race, creed,  
46 color, national origin, ancestry, marital status, familial status, sex or

1 affectional or sexual orientation in the terms, conditions or privileges  
2 of the sale, rental, lease, assignment or sublease of any real property  
3 or part or portion thereof or in the furnishing of facilities or services  
4 in connection therewith; or

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

27 i. For any person, bank, banking organization, mortgage company,  
28 insurance company or other financial institution, lender or credit  
29 institution to whom application is made for any loan or extension of  
30 credit including but not limited to an application for financial  
31 assistance for the purchase, acquisition, construction, rehabilitation,  
32 repair or maintenance of any real property or part or portion thereof  
33 or any agent or employee thereof:

34 (1) To discriminate against any person or group of persons because  
35 of the race, creed, color, national origin, ancestry, marital status, sex,  
36 affectional or sexual orientation or nationality of such person or group  
37 of persons or of the prospective occupants or tenants of such real  
38 property or part or portion thereof, in the granting, withholding,  
39 extending, modifying or renewing, or in the fixing of the rates, terms,  
40 conditions or provisions of any such loan, extension of credit or  
41 financial assistance or in the extension of services in connection  
42 therewith; or

43 (2) To use any form of application for such loan, extension of  
44 credit or financial assistance or to make record or inquiry in  
45 connection with applications for any such loan, extension of credit or  
46 financial assistance which expresses, directly or indirectly, any

1 limitation, specification or discrimination as to race, creed, color,  
2 national origin, ancestry, marital status, sex, affectional or sexual  
3 orientation or nationality or any intent to make any such limitation,  
4 specification or discrimination; unless otherwise required by law or  
5 regulation to retain or use such information; or

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

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

13 k. For any real estate broker, real estate salesperson or employee  
14 or agent thereof or any other individual, corporation, partnership, or  
15 organization, for the purpose of inducing a transaction for the sale or  
16 rental of real property from which transaction such person or any of  
17 its members may benefit financially, to represent that a change has  
18 occurred or will or may occur in the composition with respect to race,  
19 creed, color, national origin, ancestry, marital status, familial status,  
20 sex, affectional or sexual orientation or nationality of the owners or  
21 occupants in the block, neighborhood or area in which the real  
22 property is located, and to represent, directly or indirectly, that this  
23 change will or may result in undesirable consequences in the block,  
24 neighborhood or area in which the real property is located, including,  
25 but not limited to the lowering of property values, an increase in  
26 criminal or anti-social behavior, or a decline in the quality of schools  
27 or other facilities.

28 l. For any person to refuse to buy from, sell to, lease from or to,  
29 license, contract with, or trade with, provide goods, services or  
30 information to, or otherwise do business with any other person on the  
31 basis of the race, creed, color, national origin, ancestry, age, sex,  
32 affectional or sexual orientation, marital status, liability for service in  
33 the Armed Forces of the United States, or nationality of such other  
34 person or of such other person's spouse, partners, members,  
35 stockholders, directors, officers, managers, superintendents, agents,  
36 employees, business associates, suppliers, or customers. This  
37 subsection shall not prohibit refusals or other actions (1) pertaining to  
38 employee-employer collective bargaining, labor disputes, or unfair  
39 labor practices, or (2) made or taken in connection with a protest of  
40 unlawful discrimination or unlawful employment practices.

41 m. For any person to:

42 (1) Grant or accept any letter of credit or other document which  
43 evidences the transfer of funds or credit, or enter into any contract for  
44 the exchange of goods or services, where the letter of credit, contract,  
45 or other document contains any provisions requiring any person to  
46 discriminate against or to certify that he, she or it has not dealt with

1 any other person on the basis of the race, creed, color, national origin,  
2 ancestry, age, sex, affectional or sexual orientation, marital status,  
3 liability for service in the Armed Forces of the United States, or  
4 nationality of such other person or of such other person's spouse,  
5 partners, members, stockholders, directors, officers, managers,  
6 superintendents, agents, employees, business associates, suppliers, or  
7 customers.

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

12 The provisions of this subsection shall not apply to any letter of  
13 credit, contract, or other document which contains any provision  
14 pertaining to employee-employer collective bargaining, a labor dispute  
15 or an unfair labor practice, or made in connection with the protest of  
16 unlawful discrimination or an unlawful employment practice, if the  
17 other provisions of such letter of credit, contract, or other document  
18 do not otherwise violate the provisions of this subsection.

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

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

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

37 (cf: P.L.1996, c.126, s.5)

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39 2. This act shall take effect immediately.

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44 Prohibits clubs from discriminating against members in certain cases.