

ASSEMBLY, No. 2915

STATE OF NEW JERSEY

INTRODUCED MAY 5, 1997

By Assemblywoman GILL

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

3

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

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

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

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

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

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

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

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

1 qualification.

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

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

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

44 g. For the owner, lessee, sublessee, assignee or managing agent of,
45 or other person having the right of ownership or possession of or the
46 right to sell, rent, lease, assign, or sublease any real property or part

1 or portion thereof, or any agent or employee of any of these:

2 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
3 to deny to or withhold from any person or group of persons any real
4 property or part or portion thereof because of the race, creed, color,
5 national origin, ancestry, marital status, affectional or sexual
6 orientation, familial status or nationality of such person or group of
7 persons;

8 (2) To discriminate against any person or group of persons because
9 of the race, creed, color, national origin, marital status, sex, affectional
10 or sexual orientation or familial status of such person or group of
11 persons in the terms, conditions or privileges of the sale, rental or
12 lease of any real property or part or portion thereof or in the
13 furnishing of facilities or services in connection therewith; or

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

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

38 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
39 sale, rental, lease, assignment, or sublease any real property or part or
40 portion thereof to any person or group of persons or to refuse to
41 negotiate for the sale, rental, lease, assignment, or sublease of any real
42 property or part or portion thereof to any person or group of persons
43 because of the race, creed, color, national origin, ancestry, marital
44 status, familial status, sex, affectional or sexual orientation or
45 nationality of such person or group of persons, or to represent that any
46 real property or portion thereof is not available for inspection, sale,

1 rental, lease, assignment, or sublease when in fact it is so available, or
2 otherwise to deny or withhold any real property or any part or portion
3 of facilities thereof to or from any person or group of persons because
4 of the race, creed, color, national origin, ancestry, marital status,
5 familial status, sex, affectional or sexual orientation or nationality of
6 such person or group of persons;

7 (2) To discriminate against any person because of his race, creed,
8 color, national origin, ancestry, marital status, familial status, sex or
9 affectional or sexual orientation in the terms, conditions or privileges
10 of the sale, rental, lease, assignment or sublease of any real property
11 or part or portion thereof or in the furnishing of facilities or services
12 in connection therewith; or

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

35 i. For any person, bank, banking organization, mortgage company,
36 insurance company or other financial institution, lender or credit
37 institution to whom application is made for any loan or extension of
38 credit including but not limited to an application for financial
39 assistance for the purchase, acquisition, construction, rehabilitation,
40 repair or maintenance of any real property or part or portion thereof
41 or any agent or employee thereof:

42 (1) To discriminate against any person or group of persons because
43 of the race, creed, color, national origin, ancestry, marital status, sex,
44 affectional or sexual orientation or nationality of such person or group
45 of persons or of the prospective occupants or tenants of such real
46 property or part or portion thereof, in the granting, withholding,

1 extending, modifying or renewing, or in the fixing of the rates, terms,
2 conditions or provisions of any such loan, extension of credit or
3 financial assistance or in the extension of services in connection
4 therewith; or

5 (2) To use any form of application for such loan, extension of
6 credit or financial assistance or to make record or inquiry in
7 connection with applications for any such loan, extension of credit or
8 financial assistance which expresses, directly or indirectly, any
9 limitation, specification or discrimination as to race, creed, color,
10 national origin, ancestry, marital status, sex, affectional or sexual
11 orientation or nationality or any intent to make any such limitation,
12 specification or discrimination; unless otherwise required by law or
13 regulation to retain or use such information; or

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

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

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

36 l. For any person to refuse to buy from, sell to, lease from or to,
37 license, contract with, or trade with, provide goods, services or
38 information to, or otherwise do business with any other person on the
39 basis of the race, creed, color, national origin, ancestry, age, sex,
40 affectional or sexual orientation, marital status, liability for service in
41 the Armed Forces of the United States, or nationality of such other
42 person or of such other person's spouse, partners, members,
43 stockholders, directors, officers, managers, superintendents, agents,
44 employees, business associates, suppliers, or customers. This
45 subsection shall not prohibit refusals or other actions (1) pertaining to
46 employee-employer collective bargaining, labor disputes, or unfair

1 labor practices, or (2) made or taken in connection with a protest of
2 unlawful discrimination or unlawful employment practices.

3 m. For any person to:

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

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

20 The provisions of this subsection shall not apply to any letter of
21 credit, contract, or other document which contains any provision
22 pertaining to employee-employer collective bargaining, a labor dispute
23 or an unfair labor practice, or made in connection with the protest of
24 unlawful discrimination or an unlawful employment practice, if the
25 other provisions of such letter of credit, contract, or other document
26 do not otherwise violate the provisions of this subsection.

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

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

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

45 o. For an employer to:

46 (1) Make the waiver of rights granted under this or any other

1 statute, rule or regulation including the right to a jury trial, public
2 adjudication in a court of law, discovery of evidence, compensatory
3 damages, punitive damages, attorney fees, or statute of limitations a
4 condition of hiring, continued employment or compensation or a term,
5 condition or privilege of employment:

6 (2) Request any employee or prospective employee to waive any
7 claims prior to the existence of an actual dispute; or

8 (3) Harass, discharge, expel or otherwise discriminate against any
9 employee because that person has opposed any practices forbidden
10 under this subsection or that person has filed a complaint, testified or
11 assisted in any proceeding under this subsection.

12 Nothing in this subsection shall prohibit an employer and employee
13 or prospective employee from knowingly and voluntarily waiving their
14 right to a jury trial, public adjudication in a court of law, discovery of
15 evidence, compensatory damages, punitive damages, attorney fees or
16 statute of limitations after the existence of an actual dispute .

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

18

19 2. This act shall take effect immediately.

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21

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STATEMENT

23

24 This bill would amend the "Law Against Discrimination" by
25 providing that it would be an unlawful employment practice for any
26 employer: to make the waiver of rights granted under this or any other
27 statute, rule or regulation including the right to a jury trial, public
28 adjudication in a court of law, discovery of evidence, compensatory
29 damages, punitive damages, attorney fees, or statute of limitations a
30 condition of hiring, continued employment or compensation or a term,
31 condition or privilege of employment; to request any employee or
32 prospective employee to waive any claims prior to the existence of an
33 actual dispute; to harass, discharge, expel or otherwise discriminate
34 against any employee because that person has opposed any practices
35 forbidden under this subsection or that person has filed a complaint,
36 testified or assisted in any proceeding relating to an employment
37 dispute. It is the public policy of the State of New Jersey to insure that
38 all employees in the State have the full benefit of legislation passed to
39 protect them and that they are not coercively deprived of their
40 constitutional rights to a jury trial and access to a public court.

41 Nevertheless, this bill would not prohibit an employer and
42 employee or prospective employee from knowingly and voluntarily
43 waiving their right to a jury trial, public adjudication in a court of law,
44 discovery of evidence, compensatory damages, punitive damages,
45 attorney fees or statute of limitations after the existence of an actual
46 dispute.

- 1 _____
- 2
- 3 Prohibits certain provisions in employment contracts.