

P.L. 1997, CHAPTER 179, *approved August 1, 1997*
Assembly, No. 432 (*Third Reprint*)

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 ³genetic information,³ 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, ³or
15 because of the refusal to submit to a genetic test or make available the
16 results of a genetic test to an employer,³ 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
23 orders to report for active duty in the armed forces; provided further
24 that nothing herein contained shall be construed to bar an employer
25 from refusing to accept for employment any person on the basis of sex

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.

² Assembly floor amendments adopted October 21, 1996.

³ Senate SJU committee amendments adopted May 8, 1997.

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

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

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

45 c. For any employer or employment agency to print or circulate or
46 cause to be printed or circulated any statement, advertisement or

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

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

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

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

1 any individual of the opposite sex any of the accommodations,
2 advantages, facilities or privileges thereof on the basis of sex; provided
3 further, that the foregoing limitation shall not apply to any restaurant
4 as defined in R.S.33:1-1 or place where alcoholic beverages are
5 served.

6 (2) ¹[For] Notwithstanding the definition of "public
7 ²[accommodation] accommodation² " as set forth in subsection l. of
8 section ³[4] ⁵ of P.L.1945, c.169 (C.10:5-5), for¹ any owner, lessee,
9 proprietor, manager, superintendent, agent, or employee of any private
10 club or association to directly or indirectly refuse, withhold from or
11 deny to any individual who has been accepted as a club member and
12 has contracted for or is otherwise entitled to full club membership any
13 of the accommodations, advantages, facilities or privileges thereof, or
14 to discriminate against any ¹[person] member¹ in the furnishing thereof
15 on account of the race, creed, color, national origin, ancestry, marital
16 status, sex, affectional or sexual orientation or nationality of such
17 person.

18 ²In addition to the penalties otherwise provided for a violation of
19 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2) of
20 subsection f. of this section is the holder of an alcoholic beverage
21 license issued under the provisions of R.S.33:1-12 ³[that license, for
22 a first offense, shall be suspended by] for that private club or
23 association, the matter shall be referred to³ the Director of the
24 Division of Alcoholic ³[Beverages for a period of not less than 15
25 days or more than 60 days and, for a second offense, shall be revoked
26 by the director and the licensed premises ineligible for any license
27 issued under the provisions of chapter 1 of Title 33 of the Revised
28 Statutes for a period of no less than two years following the date of
29 the revocation. A suspension or revocation authorized under this
30 paragraph shall be effectuated] Beverage Control who shall impose an
31 appropriate penalty³ in accordance with the procedures set forth in
32 R.S.33:1-31.²

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

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

43 (2) To discriminate against any person or group of persons
44 because of the race, creed, color, national origin, marital status, sex,
45 affectional or sexual orientation or familial status of such person or
46 group of persons in the terms, conditions or privileges of the sale,

1 rental or lease of any real property or part or portion thereof or in the
2 furnishing of facilities or services in connection therewith; or

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

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

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

42 (2) To discriminate against any person because of his race, creed,
43 color, national origin, ancestry, marital status, familial status, sex or
44 affectional or sexual orientation in the terms, conditions or privileges
45 of the sale, rental, lease, assignment or sublease of any real property
46 or part or portion thereof or in the furnishing of facilities or services

1 in connection therewith; or

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

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

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

40 (2) To use any form of application for such loan, extension of
41 credit or financial assistance or to make record or inquiry in
42 connection with applications for any such loan, extension of credit or
43 financial assistance which expresses, directly or indirectly, any
44 limitation, specification or discrimination as to race, creed, color,
45 national origin, ancestry, marital status, sex, affectional or sexual
46 orientation or nationality or any intent to make any such limitation,

1 specification or discrimination; unless otherwise required by law or
2 regulation to retain or use such information; or

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

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

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

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

38 m. For any person to:

39 (1) Grant or accept any letter of credit or other document which
40 evidences the transfer of funds or credit, or enter into any contract for
41 the exchange of goods or services, where the letter of credit, contract,
42 or other document contains any provisions requiring any person to
43 discriminate against or to certify that he, she or it has not dealt with
44 any other person on the basis of the race, creed, color, national origin,
45 ancestry, age, sex, affectional or sexual orientation, marital status,
46 liability for service in the Armed Forces of the United States, or

1 nationality of such other person or of such other person's spouse,
2 partners, members, stockholders, directors, officers, managers,
3 superintendents, agents, employees, business associates, suppliers, or
4 customers.

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

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

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

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

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

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

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36 2. This act shall take effect immediately.

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41 Prohibits clubs from discriminating against members in certain cases.