

[First Reprint]
SENATE, No. 1656

STATE OF NEW JERSEY

INTRODUCED OCTOBER 28, 1996

By Senators SINGER and Cafiero

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 ¹genetic information,¹ 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, ¹or
15 because of the refusal to submit to a genetic test or make available the
16 results of a genetic test to an employer,¹ 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
26 in those certain circumstances where sex is a bona fide occupational
27 qualification, reasonably necessary to the normal operation of the
28 particular business or enterprise; provided further that nothing herein
29 contained shall be construed to bar an employer from refusing to
30 accept for employment or to promote any person over 70 years of age;
31 provided further that it shall not be an unlawful employment practice

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 Senate SJU committee amendments adopted May 8, 1997.

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

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

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

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

1 United States, or any intent to make any such limitation, specification
2 or discrimination, unless based upon a bona fide occupational
3 qualification.

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

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

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

1 (2) Notwithstanding the definition of "public
2 ¹[accomodation]accommodation¹" as set forth in subsection 1. of
3 section 5 of P.L.1945, c.169 (C.10:5-5), for any owner, lessee,
4 proprietor, manager, superintendent, agent, or employee of any private
5 club or association to directly or indirectly refuse, withhold from or
6 deny to any individual who has been accepted as a club member and
7 has contracted for or is otherwise entitled to full club membership any
8 of the accommodations, advantages, facilities or privileges thereof, or
9 to discriminate against any member in the furnishing thereof on
10 account of the race, creed, color, national origin, ancestry, marital
11 status, sex, affectional or sexual orientation or nationality of such
12 person.

13 ¹In addition to the penalties otherwise provided for a violation of
14 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2) of
15 subsection f. of this section is the holder of an alcoholic beverage
16 license issued under the provisions of R.S.33:1-12 for that private club
17 or association, the matter shall be referred to the Director of the
18 Division of Alcoholic Beverage Control who shall impose an
19 appropriate penalty in accordance with the procedures set forth in
20 R.S.33:1-31.¹

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

25 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
26 to deny to or withhold from any person or group of persons any real
27 property or part or portion thereof because of the race, creed, color,
28 national origin, ancestry, marital status, affectional or sexual
29 orientation, familial status or nationality of such person or group of
30 persons;

31 (2) To discriminate against any person or group of persons
32 because of the race, creed, color, national origin, marital status, sex,
33 affectional or sexual orientation or familial status of such person or
34 group of persons in the terms, conditions or privileges of the sale,
35 rental or lease of any real property or part or portion thereof or in the
36 furnishing of facilities or services in connection therewith; or

37 (3) To print, publish, circulate, issue, display, post or mail, or
38 cause to be printed, published, circulated, issued, displayed, posted or
39 mailed any statement, advertisement, publication or sign, or to use any
40 form of application for the purchase, rental, lease, assignment or
41 sublease of any real property or part or portion thereof, or to make
42 any record or inquiry in connection with the prospective purchase,
43 rental, lease, assignment, or sublease of any real property, or part or
44 portion thereof which expresses, directly or indirectly, any limitation,
45 specification or discrimination as to race, creed, color, national origin,
46 ancestry, marital status, sex, affectional or sexual orientation, familial

1 status or nationality, or any intent to make any such limitation,
2 specification or discrimination, and the production of any such
3 statement, advertisement, publicity, sign, form of application, record,
4 or inquiry purporting to be made by any such person shall be
5 presumptive evidence in any action that the same was authorized by
6 such person; provided, however, that nothing contained in this
7 subsection shall be construed to bar any person from refusing to sell,
8 rent, lease, assign or sublease or from advertising or recording a
9 qualification as to sex for any room, apartment, flat in a dwelling or
10 residential facility which is planned exclusively for and occupied by
11 individuals of one sex to any individual of the exclusively opposite sex
12 on the basis of sex.

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

15 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
16 sale, rental, lease, assignment, or sublease any real property or part or
17 portion thereof to any person or group of persons or to refuse to
18 negotiate for the sale, rental, lease, assignment, or sublease of any real
19 property or part or portion thereof to any person or group of persons
20 because of the race, creed, color, national origin, ancestry, marital
21 status, familial status, sex, affectional or sexual orientation or
22 nationality of such person or group of persons, or to represent that any
23 real property or portion thereof is not available for inspection, sale,
24 rental, lease, assignment, or sublease when in fact it is so available, or
25 otherwise to deny or withhold any real property or any part or portion
26 of facilities thereof to or from any person or group of persons because
27 of the race, creed, color, national origin, ancestry, marital status,
28 familial status, sex, affectional or sexual orientation or nationality of
29 such person or group of persons;

30 (2) To discriminate against any person because of his race, creed,
31 color, national origin, ancestry, marital status, familial status, sex or
32 affectional or sexual orientation in the terms, conditions or privileges
33 of the sale, rental, lease, assignment or sublease of any real property
34 or part or portion thereof or in the furnishing of facilities or services
35 in connection therewith; or

36 (3) To print, publish, circulate, issue, display, post, or mail, or
37 cause to be printed, published, circulated, issued, displayed, posted or
38 mailed any statement, advertisement, publication or sign, or to use any
39 form of application for the purchase, rental, lease, assignment, or
40 sublease of any real property or part or portion thereof or to make any
41 record or inquiry in connection with the prospective purchase, rental,
42 lease, assignment, or sublease of any real property or part or portion
43 thereof which expresses, directly or indirectly, any limitation,
44 specification or discrimination as to race, creed, color, national origin,
45 ancestry, marital status, familial status, sex, affectional or sexual
46 orientation or nationality or any intent to make any such limitation,

1 specification or discrimination, and the production of any such
2 statement, advertisement, publicity, sign, form of application, record,
3 or inquiry purporting to be made by any such person shall be
4 presumptive evidence in any action that the same was authorized by
5 such person; provided, however, that nothing contained in this
6 subsection h., shall be construed to bar any person from refusing to
7 sell, rent, lease, assign or sublease or from advertising or recording a
8 qualification as to sex for any room, apartment, flat in a dwelling or
9 residential facility which is planned exclusively for and occupied
10 exclusively by individuals of one sex to any individual of the opposite
11 sex on the basis of sex.

12 i. For any person, bank, banking organization, mortgage company,
13 insurance company or other financial institution, lender or credit
14 institution to whom application is made for any loan or extension of
15 credit including but not limited to an application for financial
16 assistance for the purchase, acquisition, construction, rehabilitation,
17 repair or maintenance of any real property or part or portion thereof
18 or any agent or employee thereof:

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

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

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

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

44 k. For any real estate broker, real estate salesperson or employee
45 or agent thereof or any other individual, corporation, partnership, or
46 organization, for the purpose of inducing a transaction for the sale or

1 rental of real property from which transaction such person or any of
2 its members may benefit financially, to represent that a change has
3 occurred or will or may occur in the composition with respect to race,
4 creed, color, national origin, ancestry, marital status, familial status,
5 sex, affectional or sexual orientation or nationality of the owners or
6 occupants in the block, neighborhood or area in which the real
7 property is located, and to represent, directly or indirectly, that this
8 change will or may result in undesirable consequences in the block,
9 neighborhood or area in which the real property is located, including,
10 but not limited to the lowering of property values, an increase in
11 criminal or anti-social behavior, or a decline in the quality of schools
12 or other facilities.

13 1. For any person to refuse to buy from, sell to, lease from or to,
14 license, contract with, or trade with, provide goods, services or
15 information to, or otherwise do business with any other person on the
16 basis of the race, creed, color, national origin, ancestry, age, sex,
17 affectional or sexual orientation, marital status, liability for service in
18 the Armed Forces of the United States, or nationality of such other
19 person or of such other person's spouse, partners, members,
20 stockholders, directors, officers, managers, superintendents, agents,
21 employees, business associates, suppliers, or customers. This
22 subsection shall not prohibit refusals or other actions (1) pertaining to
23 employee-employer collective bargaining, labor disputes, or unfair
24 labor practices, or (2) made or taken in connection with a protest of
25 unlawful discrimination or unlawful employment practices.

26 m. For any person to:

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

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

43 The provisions of this subsection shall not apply to any letter of
44 credit, contract, or other document which contains any provision
45 pertaining to employee-employer collective bargaining, a labor dispute
46 or an unfair labor practice, or made in connection with the protest of

1 unlawful discrimination or an unlawful employment practice, if the
2 other provisions of such letter of credit, contract, or other document
3 do not otherwise violate the provisions of this subsection.

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

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

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

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

23

24 2. This act shall take effect immediately.

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Prohibits clubs from discriminating against members in certain cases.