

# SENATE, No. 397

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

**Senators Diegnan, Thompson, Greenstein, Pou, Lagana and Testa**

**SYNOPSIS**

Expands scope of law prohibiting age discrimination.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 5/6/2021)**

1 AN ACT concerning age discrimination and revising various parts of  
2 the statutory law.

3

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

6

7 1. Section 1 of P.L.1938, c.295 (C.10:3-1) is amended to read  
8 as follows:

9 1. In the selection of persons for employment in the service of  
10 the State, or of any county or municipality thereof, no appointing  
11 officer shall discriminate against any such applicant because such  
12 applicant has attained the age of at least 40 years, at the time of said  
13 application for employment. Any provisions of law, executive  
14 order, rule or regulation to the contrary notwithstanding, no person  
15 other than a justice of the Supreme Court or a judge of the Superior  
16 Court pursuant to Article VI, Section VI, paragraph 3 of the  
17 Constitution of the State of New Jersey, or a judge of the Tax  
18 Court, or a judge of the Office of Administrative Law or a judge of  
19 the Division of Workers' Compensation, or a member of the  
20 Division of State Police, employed in the service of the State, or of  
21 any county or municipality thereof, or a member of a police or fire  
22 department employed in the service of the State or of any county or  
23 municipality thereof, shall be required to retire upon the attainment  
24 of a particular age unless the public employer can show that **the**  
25 retirement age bears a manifest relationship to the employment in  
26 question or that **the** person in the service of the State, or of any  
27 county or municipality thereof, is unable to adequately perform the  
28 person's duties. A contract of tenure or similar arrangement  
29 providing for tenure shall not bar a public employer from showing  
30 that **a** retirement age bears a manifest relationship to the  
31 employment in question or that **the** person in the service of the  
32 State, or of any county or municipality thereof, is unable to  
33 adequately perform the person's duties. A person in the employ of  
34 the State, or of any county or municipality thereof, who is required  
35 to retire upon the attainment of a particular age in violation of this  
36 section shall be entitled to reinstatement with back pay and interest.  
37 (cf: P.L.1999, c.380, s.15)

38

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

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

43 a. For an employer, because of the race, creed, color, national  
44 origin, ancestry, age, marital status, civil union status, domestic  
45 partnership status, affectional or sexual orientation, genetic

**EXPLANATION** – Matter enclosed in bold-faced brackets **thus** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 information, pregnancy or breastfeeding, sex, gender identity or  
2 expression, disability or atypical hereditary cellular or blood trait of  
3 any individual, or because of the liability for service in the Armed  
4 Forces of the United States or the nationality of any individual, or  
5 because of the refusal to submit to a genetic test or make available  
6 the results of a genetic test to an employer, to refuse to hire or  
7 employ or to bar or to discharge or require to retire, unless justified  
8 by lawful considerations other than age, from employment such  
9 individual or to discriminate against such individual in  
10 compensation or in terms, conditions or privileges of employment;  
11 provided, however, it shall not be an unlawful employment practice  
12 to refuse to accept for employment an applicant who has received a  
13 notice of induction or orders to report for active duty in the armed  
14 forces; provided further that nothing herein contained shall be  
15 construed to bar an employer from refusing to accept for  
16 employment any person on the basis of sex in those certain  
17 circumstances where sex is a bona fide occupational qualification,  
18 reasonably necessary to the normal operation of the particular  
19 business or enterprise; [provided further that nothing herein  
20 contained shall be construed to bar an employer from refusing to  
21 accept for employment or to promote any person over 70 years of  
22 age;] provided further that it shall not be an unlawful employment  
23 practice for a club exclusively social or fraternal to use club  
24 membership as a uniform qualification for employment, or for a  
25 religious association or organization to utilize religious affiliation  
26 as a uniform qualification in the employment of clergy, religious  
27 teachers or other employees engaged in the religious activities of  
28 the association or organization, or in following the tenets of its  
29 religion in establishing and utilizing criteria for employment of an  
30 employee; provided further, that it shall not be an unlawful  
31 employment practice to require the retirement of any employee  
32 who, for the two-year period immediately before retirement, is  
33 employed in a bona fide executive or a high policy-making position,  
34 if that employee is entitled to an immediate non-forfeitable annual  
35 retirement benefit from a pension, profit sharing, savings or  
36 deferred retirement plan, or any combination of those plans, of the  
37 employer of that employee which equals in the aggregate at least  
38 \$27,000.00; and provided further that an employer may restrict  
39 employment to citizens of the United States where such restriction  
40 is required by federal law or is otherwise necessary to protect the  
41 national interest.

42 The provisions of subsections a. and b. of section 57 of  
43 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of  
44 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an  
45 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

46 For the purposes of this subsection, a "bona fide executive" is a  
47 top level employee who exercises substantial executive authority

1 over a significant number of employees and a large volume of  
2 business. A "high policy-making position" is a position in which a  
3 person plays a significant role in developing policy and in  
4 recommending the implementation thereof.

5 For the purposes of this subsection, an unlawful employment  
6 practice occurs, with respect to discrimination in compensation or  
7 in the financial terms or conditions of employment, each occasion  
8 that an individual is affected by application of a discriminatory  
9 compensation decision or other practice, including, but not limited  
10 to, each occasion that wages, benefits, or other compensation are  
11 paid, resulting in whole or in part from the decision or other  
12 practice.

13 In addition to any other relief authorized by the "Law Against  
14 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for  
15 discrimination in compensation or in the financial terms or  
16 conditions of employment, liability shall accrue and an aggrieved  
17 person may obtain relief for back pay for the entire period of time ,  
18 except not more than six years, in which the violation with regard to  
19 discrimination in compensation or in the financial terms or  
20 conditions of employment has been continuous, if the violation  
21 continues to occur within the statute of limitations.

22 Nothing in this subsection shall prohibit the application of the  
23 doctrine of "continuing violation" or the "discovery rule" to any  
24 appropriate claim as those doctrines currently exist in New Jersey  
25 common law. It shall be an unlawful employment practice to  
26 require employees or prospective employees to consent to a  
27 shortened statute of limitations or to waive any of the protections  
28 provided by the "Law Against Discrimination," P.L.1945, c.169  
29 (C.10:5-1 et seq.).

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

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

14 d. For any person to take reprisals against any person because  
15 that person has opposed any practices or acts forbidden under this  
16 act or because that person has sought legal advice regarding rights  
17 under this act, shared relevant information with legal counsel,  
18 shared information with a governmental entity, or filed a complaint,  
19 testified or assisted in any proceeding under this act or to coerce,  
20 intimidate, threaten or interfere with any person in the exercise or  
21 enjoyment of, or on account of that person having aided or  
22 encouraged any other person in the exercise or enjoyment of, any  
23 right granted or protected by this act.

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

27 f. (1) For any owner, lessee, proprietor, manager,  
28 superintendent, agent, or employee of any place of public  
29 accommodation directly or indirectly to refuse, withhold from or  
30 deny to any person any of the accommodations, advantages,  
31 facilities or privileges thereof, or to discriminate against any person  
32 in the furnishing thereof, or directly or indirectly to publish,  
33 circulate, issue, display, post or mail any written or printed  
34 communication, notice, or advertisement to the effect that any of  
35 the accommodations, advantages, facilities, or privileges of any  
36 such place will be refused, withheld from, or denied to any person  
37 on account of the race, creed, color, national origin, ancestry,  
38 marital status, civil union status, domestic partnership status,  
39 pregnancy or breastfeeding, sex, gender identity or expression,  
40 affectional or sexual orientation, disability, liability for service in  
41 the Armed Forces of the United States or nationality of such person,  
42 or that the patronage or custom thereat of any person of any  
43 particular race, creed, color, national origin, ancestry, marital status,  
44 civil union status, domestic partnership status, pregnancy or  
45 breastfeeding status, sex, gender identity or expression, affectional  
46 or sexual orientation, disability, liability for service in the Armed  
47 Forces of the United States or nationality is unwelcome,

1 objectionable or not acceptable, desired or solicited, and the  
2 production of any such written or printed communication, notice or  
3 advertisement, purporting to relate to any such place and to be made  
4 by any owner, lessee, proprietor, superintendent or manager thereof,  
5 shall be presumptive evidence in any action that the same was  
6 authorized by such person; provided, however, that nothing  
7 contained herein shall be construed to bar any place of public  
8 accommodation which is in its nature reasonably restricted  
9 exclusively to individuals of one sex, and which shall include but  
10 not be limited to any summer camp, day camp, or resort camp,  
11 bathhouse, dressing room, swimming pool, gymnasium, comfort  
12 station, dispensary, clinic or hospital, or school or educational  
13 institution which is restricted exclusively to individuals of one sex,  
14 provided individuals shall be admitted based on their gender  
15 identity or expression, from refusing, withholding from or denying  
16 to any individual of the opposite sex any of the accommodations,  
17 advantages, facilities or privileges thereof on the basis of sex;  
18 provided further, that the foregoing limitation shall not apply to any  
19 restaurant as defined in R.S.33:1-1 or place where alcoholic  
20 beverages are served.

21 (2) Notwithstanding the definition of "a place of public  
22 accommodation" as set forth in subsection 1. of section 5 of  
23 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,  
24 manager, superintendent, agent, or employee of any private club or  
25 association to directly or indirectly refuse, withhold from or deny to  
26 any individual who has been accepted as a club member and has  
27 contracted for or is otherwise entitled to full club membership any  
28 of the accommodations, advantages, facilities or privileges thereof,  
29 or to discriminate against any member in the furnishing thereof on  
30 account of the race, creed, color, national origin, ancestry, marital  
31 status, civil union status, domestic partnership status, pregnancy or  
32 breastfeeding, sex, gender identity, or expression, affectional or  
33 sexual orientation, disability, liability for service in the Armed  
34 Forces of the United States or nationality of such person.

35 In addition to the penalties otherwise provided for a violation of  
36 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)  
37 of subsection f. of this section is the holder of an alcoholic beverage  
38 license issued under the provisions of R.S.33:1-12 for that private  
39 club or association, the matter shall be referred to the Director of  
40 the Division of Alcoholic Beverage Control who shall impose an  
41 appropriate penalty in accordance with the procedures set forth in  
42 R.S.33:1-31.

43 g. For any person, including but not limited to, any owner,  
44 lessee, sublessee, assignee or managing agent of, or other person  
45 having the right of ownership or possession of or the right to sell,  
46 rent, lease, assign, or sublease any real property or part or portion  
47 thereof, or any agent or employee of any of these:

1 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise  
2 to deny to or withhold from any person or group of persons any real  
3 property or part or portion thereof because of race, creed, color,  
4 national origin, ancestry, marital status, civil union status, domestic  
5 partnership status, pregnancy or breastfeeding, sex, gender identity  
6 or expression, affectional or sexual orientation, familial status,  
7 disability, liability for service in the Armed Forces of the United  
8 States, nationality, or source of lawful income used for rental or  
9 mortgage payments;

10 (2) To discriminate against any person or group of persons  
11 because of race, creed, color, national origin, ancestry, marital  
12 status, civil union status, domestic partnership status, pregnancy or  
13 breastfeeding, sex, gender identity or expression, affectional or  
14 sexual orientation, familial status, disability, liability for service in  
15 the Armed Forces of the United States, nationality or source of  
16 lawful income used for rental or mortgage payments in the terms,  
17 conditions or privileges of the sale, rental or lease of any real  
18 property or part or portion thereof or in the furnishing of facilities  
19 or services in connection therewith;

20 (3) To print, publish, circulate, issue, display, post or mail, or  
21 cause to be printed, published, circulated, issued, displayed, posted  
22 or mailed any statement, advertisement, publication or sign, or to  
23 use any form of application for the purchase, rental, lease,  
24 assignment or sublease of any real property or part or portion  
25 thereof, or to make any record or inquiry in connection with the  
26 prospective purchase, rental, lease, assignment, or sublease of any  
27 real property, or part or portion thereof which expresses, directly or  
28 indirectly, any limitation, specification or discrimination as to race,  
29 creed, color, national origin, ancestry, marital status, civil union  
30 status, domestic partnership status, pregnancy or breastfeeding, sex,  
31 gender identity, or expression, affectional or sexual orientation,  
32 familial status, disability, liability for service in the Armed Forces  
33 of the United States, nationality, or source of lawful income used  
34 for rental or mortgage payments, or any intent to make any such  
35 limitation, specification or discrimination, and the production of  
36 any such statement, advertisement, publicity, sign, form of  
37 application, record, or inquiry purporting to be made by any such  
38 person shall be presumptive evidence in any action that the same  
39 was authorized by such person; provided, however, that nothing  
40 contained in this subsection shall be construed to bar any person  
41 from refusing to sell, rent, lease, assign or sublease or from  
42 advertising or recording a qualification as to sex for any room,  
43 apartment, flat in a dwelling or residential facility which is planned  
44 exclusively for and occupied by individuals of one sex to any  
45 individual of the exclusively opposite sex on the basis of sex  
46 provided individuals shall be qualified based on their gender  
47 identity or expression;

1 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise  
2 to deny to or withhold from any person or group of persons any real  
3 property or part or portion thereof because of the source of any  
4 lawful income received by the person or the source of any lawful  
5 rent payment to be paid for the real property; or

6 (5) To refuse to rent or lease any real property to another person  
7 because that person's family includes children under 18 years of  
8 age, or to make an agreement, rental or lease of any real property  
9 which provides that the agreement, rental or lease shall be rendered  
10 null and void upon the birth of a child. This paragraph shall not  
11 apply to housing for older persons as defined in subsection mm. of  
12 section 5 of P.L.1945, c.169 (C.10:5-5).

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  
17 or 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  
19 real property or part or portion thereof to any person or group of  
20 persons because of race, creed, color, national origin, ancestry,  
21 marital status, civil union status, domestic partnership status,  
22 familial status, pregnancy or breastfeeding, sex, gender identity or  
23 expression, affectional or sexual orientation, liability for service in  
24 the Armed Forces of the United States, disability, nationality, or  
25 source of lawful income used for rental or mortgage payments, or to  
26 represent that any real property or portion thereof is not available  
27 for inspection, sale, rental, lease, assignment, or sublease when in  
28 fact it is so available, or otherwise to deny or withhold any real  
29 property or any part or portion of facilities thereof to or from any  
30 person or group of persons because of race, creed, color, national  
31 origin, ancestry, marital status, civil union status, domestic  
32 partnership status, familial status, pregnancy or breastfeeding, sex,  
33 gender identity or expression, affectional or sexual orientation,  
34 disability, liability for service in the Armed Forces of the United  
35 States, or nationality;

36 (2) To discriminate against any person because of race, creed,  
37 color, national origin, ancestry, marital status, civil union status,  
38 domestic partnership status, familial status, pregnancy or  
39 breastfeeding, sex, gender identity or expression, affectional or  
40 sexual orientation, disability, liability for service in the Armed  
41 Forces of the United States, nationality, or source of lawful income  
42 used for rental or mortgage payments in the terms, conditions or  
43 privileges of the sale, rental, lease, assignment or sublease of any  
44 real property or part or portion thereof or in the furnishing of  
45 facilities or services in connection therewith;

46 (3) To print, publish, circulate, issue, display, post, or mail, or  
47 cause to be printed, published, circulated, issued, displayed, posted

1 or mailed any statement, advertisement, publication or sign, or to  
2 use any form of application for the purchase, rental, lease,  
3 assignment, or sublease of any real property or part or portion  
4 thereof or to make any record or inquiry in connection with the  
5 prospective purchase, rental, lease, assignment, or sublease of any  
6 real property or part or portion thereof which expresses, directly or  
7 indirectly, any limitation, specification or discrimination as to race,  
8 creed, color, national origin, ancestry, marital status, civil union  
9 status, domestic partnership status, familial status, pregnancy or  
10 breastfeeding, sex, gender identity or expression, affectional or  
11 sexual orientation, disability, liability for service in the Armed  
12 Forces of the United States, nationality, or source of lawful income  
13 used for rental or mortgage payments or any intent to make any  
14 such limitation, specification or discrimination, and the production  
15 of any such statement, advertisement, publicity, sign, form of  
16 application, record, or inquiry purporting to be made by any such  
17 person shall be presumptive evidence in any action that the same  
18 was authorized by such person; provided, however, that nothing  
19 contained in this subsection h., shall be construed to bar any person  
20 from refusing to sell, rent, lease, assign or sublease or from  
21 advertising or recording a qualification as to sex for any room,  
22 apartment, flat in a dwelling or residential facility which is planned  
23 exclusively for and occupied exclusively by individuals of one sex  
24 to any individual of the opposite sex on the basis of sex, provided  
25 individuals shall be qualified based on their gender identity or  
26 expression;

27 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise  
28 to deny to or withhold from any person or group of persons any real  
29 property or part or portion thereof because of the source of any  
30 lawful income received by the person or the source of any lawful  
31 rent payment to be paid for the real property; or

32 (5) To refuse to rent or lease any real property to another person  
33 because that person's family includes children under 18 years of  
34 age, or to make an agreement, rental or lease of any real property  
35 which provides that the agreement, rental or lease shall be rendered  
36 null and void upon the birth of a child. This paragraph shall not  
37 apply to housing for older persons as defined in subsection mm. of  
38 section 5 of P.L.1945, c.169 (C.10:5-5).

39 i. For any person, bank, banking organization, mortgage  
40 company, insurance company or other financial institution, lender  
41 or credit institution involved in the making or purchasing of any  
42 loan or extension of credit, for whatever purpose, whether secured  
43 by residential real estate or not, including but not limited to  
44 financial assistance for the purchase, acquisition, construction,  
45 rehabilitation, repair or maintenance of any real property or part or  
46 portion thereof or any agent or employee thereof:

1 (1) To discriminate against any person or group of persons  
2 because of race, creed, color, national origin, ancestry, marital  
3 status, civil union status, domestic partnership status, pregnancy or  
4 breastfeeding, sex, gender identity or expression, affectional or  
5 sexual orientation, disability, liability for service in the Armed  
6 Forces of the United States, familial status or nationality, in the  
7 granting, withholding, extending, modifying, renewing, or  
8 purchasing, or in the fixing of the rates, terms, conditions or  
9 provisions of any such loan, extension of credit or financial  
10 assistance or purchase thereof or in the extension of services in  
11 connection therewith;

12 (2) To use any form of application for such loan, extension of  
13 credit or financial assistance or to make record or inquiry in  
14 connection with applications for any such loan, extension of credit  
15 or financial assistance which expresses, directly or indirectly, any  
16 limitation, specification or discrimination as to race, creed, color,  
17 national origin, ancestry, marital status, civil union status, domestic  
18 partnership status, pregnancy or breastfeeding, sex, gender identity  
19 or expression, affectional or sexual orientation, disability, liability  
20 for service in the Armed Forces of the United States, familial status  
21 or nationality or any intent to make any such limitation,  
22 specification or discrimination; unless otherwise required by law or  
23 regulation to retain or use such information;

24 (3) (Deleted by amendment, P.L.2003, c.180).

25 (4) To discriminate against any person or group of persons  
26 because of the source of any lawful income received by the person  
27 or the source of any lawful rent payment to be paid for the real  
28 property; or

29 (5) To discriminate against any person or group of persons  
30 because that person's family includes children under 18 years of  
31 age, or to make an agreement or mortgage which provides that the  
32 agreement or mortgage shall be rendered null and void upon the  
33 birth of a child. This paragraph shall not apply to housing for older  
34 persons as defined in subsection mm. of section 5 of P.L.1945,  
35 c.169 (C.10:5-5).

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

40 k. For any real estate broker, real estate salesperson or  
41 employee or agent thereof or any other individual, corporation,  
42 partnership, or organization, for the purpose of inducing a  
43 transaction for the sale or rental of real property from which  
44 transaction such person or any of its members may benefit  
45 financially, to represent that a change has occurred or will or may  
46 occur in the composition with respect to race, creed, color, national  
47 origin, ancestry, marital status, civil union status, domestic

1 partnership status, familial status, pregnancy or breastfeeding, sex,  
2 gender identity or expression, affectional or sexual orientation,  
3 disability, liability for service in the Armed Forces of the United  
4 States, nationality, or source of lawful income used for rental or  
5 mortgage payments of the owners or occupants in the block,  
6 neighborhood or area in which the real property is located, and to  
7 represent, directly or indirectly, that this change will or may result  
8 in undesirable consequences in the block, neighborhood or area in  
9 which the real property is located, including, but not limited to the  
10 lowering of property values, an increase in criminal or anti-social  
11 behavior, or a decline in the quality of schools or other facilities.

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

29 m. For any person to:

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

44 (2) Refuse to grant or accept any letter of credit or other  
45 document which evidences the transfer of funds or credit, or refuse  
46 to enter into any contract for the exchange of goods or services, on

1 the ground that it does not contain such a discriminatory provision  
2 or certification.

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

11 n. For any person to aid, abet, incite, compel, coerce, or induce  
12 the doing of any act forbidden by subsections l. and m. of section  
13 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to  
14 do so. Such prohibited conduct shall include, but not be limited to:

15 (1) Buying from, selling to, leasing from or to, licensing,  
16 contracting with, trading with, providing goods, services, or  
17 information to, or otherwise doing business with any person  
18 because that person does, or agrees or attempts to do, any such act  
19 or any act prohibited by this subsection; or

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

29 o. For any multiple listing service, real estate brokers'  
30 organization or other service, organization or facility related to the  
31 business of selling or renting dwellings to deny any person access  
32 to or membership or participation in such organization, or to  
33 discriminate against such person in the terms or conditions of such  
34 access, membership, or participation, on account of race, creed,  
35 color, national origin, ancestry, age, marital status, civil union  
36 status, domestic partnership status, familial status, pregnancy or  
37 breastfeeding, sex, gender identity or expression, affectional or  
38 sexual orientation, disability, liability for service in the Armed  
39 Forces of the United States or nationality.

40 p. Nothing in the provisions of this section shall affect the  
41 ability of an employer to require employees to adhere to reasonable  
42 workplace appearance, grooming and dress standards not precluded  
43 by other provisions of State or federal law, except that an employer  
44 shall allow an employee to appear, groom and dress consistent with  
45 the employee's gender identity or expression.

46 q. (1) For any employer to impose upon a person as a  
47 condition of obtaining or retaining employment, including

1 opportunities for promotion, advancement or transfers, any terms or  
2 conditions that would require a person to violate or forego a  
3 sincerely held religious practice or religious observance, including  
4 but not limited to the observance of any particular day or days or  
5 any portion thereof as a Sabbath or other holy day in accordance  
6 with the requirements of the religion or religious belief, unless,  
7 after engaging in a bona fide effort, the employer demonstrates that  
8 it is unable to reasonably accommodate the employee's religious  
9 observance or practice without undue hardship on the conduct of the  
10 employer's business. Notwithstanding any other provision of law to  
11 the contrary, an employee shall not be entitled to premium wages or  
12 premium benefits for work performed during hours to which those  
13 premium wages or premium benefits would ordinarily be  
14 applicable, if the employee is working during those hours only as an  
15 accommodation to his religious requirements. Nothing in this  
16 subsection q. shall be construed as reducing:

17 (a) The number of the hours worked by the employee which are  
18 counted towards the accruing of seniority, pension or other benefits;  
19 or

20 (b) Any premium wages or benefits provided to an employee  
21 pursuant to a collective bargaining agreement.

22 (2) For an employer to refuse to permit an employee to utilize  
23 leave, as provided for in this subsection q., which is solely used to  
24 accommodate the employee's sincerely held religious observance or  
25 practice. Except where it would cause an employer to incur an  
26 undue hardship, no person shall be required to remain at his place  
27 of employment during any day or days or portion thereof that, as a  
28 requirement of his religion, he observes as his Sabbath or other holy  
29 day, including a reasonable time prior and subsequent thereto for  
30 travel between his place of employment and his home; provided that  
31 any such absence from work shall, wherever practicable in the  
32 reasonable judgment of the employer, be made up by an equivalent  
33 amount of time and work at some other mutually convenient time,  
34 or shall be charged against any leave with pay ordinarily granted,  
35 other than sick leave, and any such absence not so made up or  
36 charged, may be treated by the employer of that person as leave  
37 taken without pay.

38 (3) (a) For purposes of this subsection q., "undue hardship"  
39 means an accommodation requiring unreasonable expense or  
40 difficulty, unreasonable interference with the safe or efficient  
41 operation of the workplace or a violation of a bona fide seniority  
42 system or a violation of any provision of a bona fide collective  
43 bargaining agreement.

44 (b) In determining whether the accommodation constitutes an  
45 undue hardship, the factors considered shall include:

46 (i) The identifiable cost of the accommodation, including the  
47 costs of loss of productivity and of retaining or hiring employees or

1 transferring employees from one facility to another, in relation to  
2 the size and operating cost of the employer.

3 (ii) The number of individuals who will need the particular  
4 accommodation for a sincerely held religious observance or  
5 practice.

6 (iii) For an employer with multiple facilities, the degree to which  
7 the geographic separateness or administrative or fiscal relationship  
8 of the facilities will make the accommodation more difficult or  
9 expensive.

10 (c) An accommodation shall be considered to constitute an  
11 undue hardship if it will result in the inability of an employee to  
12 perform the essential functions of the position in which he or she is  
13 employed.

14 (d) (i) The provisions of this subsection q. shall be applicable  
15 only to reasonable accommodations of religious observances and  
16 shall not supersede any definition of undue hardship or standards  
17 for reasonable accommodation of the disabilities of employees.

18 (ii) This subsection q. shall not apply where the uniform  
19 application of terms and conditions of attendance to employees is  
20 essential to prevent undue hardship to the employer. The burden of  
21 proof regarding the applicability of this subparagraph (d) shall be  
22 upon the employer.

23 r. For any employer to take reprisals against any employee for  
24 requesting from , discussing with, or disclosing to, any other  
25 employee or former employee of the employer, a lawyer from  
26 whom the employee seeks legal advice, or any government agency  
27 information regarding the job title, occupational category, and rate  
28 of compensation, including benefits, of the employee or any other  
29 employee or former employee of the employer, or the gender, race,  
30 ethnicity, military status, or national origin of the employee or any  
31 other employee or former employee of the employer, regardless of  
32 whether the request was responded to , or to require, as a condition  
33 of employment, any employee or prospective employee to sign a  
34 waiver, or to otherwise require an employee or prospective  
35 employee to agree, not to make those requests or disclosures.  
36 Nothing in this subsection shall be construed to require an  
37 employee to disclose such information about the employee herself  
38 to any other employee or former employee of the employer or to  
39 any authorized representative of the other employee or former  
40 employee.

41 s. For an employer to treat, for employment-related purposes, a  
42 woman employee that the employer knows, or should know, is  
43 affected by pregnancy or breastfeeding in a manner less favorable  
44 than the treatment of other persons not affected by pregnancy or  
45 breastfeeding but similar in their ability or inability to work. In  
46 addition, an employer of an employee who is a woman affected by  
47 pregnancy shall make available to the employee reasonable

1 accommodation in the workplace, such as bathroom breaks, breaks  
2 for increased water intake, periodic rest, assistance with manual  
3 labor, job restructuring or modified work schedules, and temporary  
4 transfers to less strenuous or hazardous work, for needs related to  
5 the pregnancy when the employee, based on the advice of her  
6 physician, requests the accommodation, and, in the case of a  
7 employee breast feeding her infant child, the accommodation shall  
8 include reasonable break time each day to the employee and a  
9 suitable room or other location with privacy, other than a toilet stall,  
10 in close proximity to the work area for the employee to express  
11 breast milk for the child, unless the employer can demonstrate that  
12 providing the accommodation would be an undue hardship on the  
13 business operations of the employer. The employer shall not in any  
14 way penalize the employee in terms, conditions or privileges of  
15 employment for requesting or using the accommodation. Workplace  
16 accommodation provided pursuant to this subsection and paid or  
17 unpaid leave provided to an employee affected by pregnancy or  
18 breastfeeding shall not be provided in a manner less favorable than  
19 accommodations or leave provided to other employees not affected  
20 by pregnancy or breastfeeding but similar in their ability or inability  
21 to work. This subsection shall not be construed as otherwise  
22 increasing or decreasing any employee's rights under law to paid or  
23 unpaid leave in connection with pregnancy or breastfeeding.

24 For the purposes of this section "pregnancy or breastfeeding"  
25 means pregnancy, childbirth, and breast feeding or expressing milk  
26 for breastfeeding, or medical conditions related to pregnancy,  
27 childbirth, or breastfeeding, including recovery from childbirth.

28 For the purposes of this subsection, in determining whether an  
29 accommodation would impose undue hardship on the operation of  
30 an employer's business, the factors to be considered include: the  
31 overall size of the employer's business with respect to the number  
32 of employees, number and type of facilities, and size of budget; the  
33 type of the employer's operations, including the composition and  
34 structure of the employer's workforce; the nature and cost of the  
35 accommodation needed, taking into consideration the availability of  
36 tax credits, tax deductions, and outside funding; and the extent to  
37 which the accommodation would involve waiver of an essential  
38 requirement of a job as opposed to a tangential or non-business  
39 necessity requirement.

40 t. For an employer to pay any of its employees who is a  
41 member of a protected class at a rate of compensation, including  
42 benefits, which is less than the rate paid by the employer to  
43 employees who are not members of the protected class for  
44 substantially similar work, when viewed as a composite of skill,  
45 effort and responsibility. An employer who is paying a rate of  
46 compensation in violation of this subsection shall not reduce the  
47 rate of compensation of any employee in order to comply with this

1 subsection. An employer may pay a different rate of compensation  
2 only if the employer demonstrates that the differential is made  
3 pursuant to a seniority system, a merit system, or the employer  
4 demonstrates:

5 (1) That the differential is based on one or more legitimate, bona  
6 fide factors other than the characteristics of members of the  
7 protected class, such as training, education or experience, or the  
8 quantity or quality of production;

9 (2) That the factor or factors are not based on, and do not  
10 perpetuate, a differential in compensation based on sex or any other  
11 characteristic of members of a protected class;

12 (3) That each of the factors is applied reasonably;

13 (4) That one or more of the factors account for the entire wage  
14 differential; and

15 (5) That the factors are job-related with respect to the position  
16 in question and based on a legitimate business necessity. A factor  
17 based on business necessity shall not apply if it is demonstrated that  
18 there are alternative business practices that would serve the same  
19 business purpose without producing the wage differential.

20 Comparisons of wage rates shall be based on wage rates in all of  
21 an employer's operations or facilities. For the purposes of this  
22 subsection, "member of a protected class" means an employee who  
23 has one or more characteristics, including race, creed, color,  
24 national origin, nationality, ancestry, age, marital status, civil union  
25 status, domestic partnership status, affectional or sexual orientation,  
26 genetic information, pregnancy, sex, gender identity or expression,  
27 disability or atypical hereditary cellular or blood trait of any  
28 individual, or liability for service in the armed forces, for which  
29 subsection a. of this section prohibits an employer from refusing to  
30 hire or employ or barring or discharging or requiring to retire from  
31 employment or discriminating against the individual in  
32 compensation or in terms, conditions or privileges of employment.

33 (cf: P.L.2018, c.9, s.2)

34

35 3. Section 5 of P.L.1985, c.73 (C.10:5-12.1) is amended to read  
36 as follows:

37 5. **【Notwithstanding any provision of law to the contrary】** As  
38 an alternative to or in addition to any other sanction provided by  
39 any other applicable law, relief for having been required to retire in  
40 violation of the provisions of section 11 of P.L.1945, c.169 (C.10:5-  
41 12), shall be available to the person aggrieved by that violation  
42 **【solely】** through the procedure initiated by filing a complaint with  
43 the Attorney General under the provisions of P.L.1945, c.169  
44 (C.10:5-1 et seq.).

45 **【Notwithstanding any provision to the contrary of】** As an  
46 alternative to or in addition to any other sanction provided by  
47 section 16 of P.L.1945, c.169 (C.10:5-17) or any other applicable

1 law, relief ordered for or granted to a person in connection with his  
2 being required to retire in violation of the provisions of section 11  
3 of P.L.1945, c.169 (C.10:5-12) shall **【be limited to his】** include  
4 reinstatement with back pay and interest.  
5 (cf: P.L.1985, c.73, s.5)  
6

7 4. Section 4 of P.L.1985, c.73 (C.10:5-2.2) is repealed.  
8

9 5. This act shall take effect immediately.  
10

11  
12 STATEMENT  
13

14 This bill amends current law to extend protections against age  
15 discrimination by:

16 1. Deleting the provision of section 1 of P.L.1938, c.295  
17 (C.10:3-1) that permits a governmental employer to require  
18 retirement when an employee attains a particular age if the  
19 employer can show “that the retirement age bears a manifest  
20 relationship to the employment in question”;

21 2. Deleting the provision of section 11 of the "Law Against  
22 Discrimination," P.L.1945, c.169 (C.10:5-12) that states: “nothing  
23 herein contained shall be construed to bar an employer from  
24 refusing to accept for employment or to promote any person over 70  
25 years,” having the effect of no longer permitting employers to  
26 refuse to hire persons for the sole reason of being more than 70  
27 years old;

28 3. Amending section 5 of P.L.1985, c.73 (C.10:5-12.1) to  
29 provide that, in a claim of unlawfully being required to retire  
30 because of age, an employee has available all of the remedies  
31 provided by any applicable law, instead of, as that section currently  
32 provides, being limited to filing a complaint with the Attorney  
33 General and having relief limited to reinstatement with back pay  
34 and interest; and

35 4. Repealing section 4 of P.L.1985, c.73 (C.10:5-2.2), which  
36 permits institutions of higher education to require tenured  
37 employees to retire at the age of 70 years.