

ASSEMBLY, No. 4173

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED SEPTEMBER 19, 2016

Sponsored by:

Assemblywoman MARLENE CARIDE

District 36 (Bergen and Passaic)

SYNOPSIS

Provides for a two-year statute of limitations in discrimination case under the “Law Against Discrimination” and prohibits certain waiver provisions in employment contracts.

CURRENT VERSION OF TEXT

As introduced.



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2

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

2

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

5

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

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, civil union status, domestic
12 partnership status, affectional or sexual orientation, genetic
13 information, pregnancy, sex, gender identity or expression,
14 disability or atypical hereditary cellular or blood trait of any
15 individual, or because of the liability for service in the Armed
16 Forces of the United States or the nationality of any individual, or
17 because of the refusal to submit to a genetic test or make available
18 the results of a genetic test to an employer, to refuse to hire or
19 employ or to bar or to discharge or require to retire, unless justified
20 by lawful considerations other than age, from employment such
21 individual or to discriminate against such individual in
22 compensation or in terms, conditions or privileges of employment;
23 provided, however, it shall not be an unlawful employment practice
24 to refuse to accept for employment an applicant who has received a
25 notice of induction or orders to report for active duty in the armed
26 forces; provided further that nothing herein contained shall be
27 construed to bar an employer from refusing to accept for
28 employment any person on the basis of sex in those certain
29 circumstances where sex is a bona fide occupational qualification,
30 reasonably necessary to the normal operation of the particular
31 business or enterprise; provided further that nothing herein
32 contained shall be construed to bar an employer from refusing to
33 accept for employment or to promote any person over 70 years of
34 age; provided further that it shall not be an unlawful employment
35 practice for a club exclusively social or fraternal to use club
36 membership as a uniform qualification for employment, or for a
37 religious association or organization to utilize religious affiliation
38 as a uniform qualification in the employment of clergy, religious
39 teachers or other employees engaged in the religious activities of
40 the association or organization, or in following the tenets of its
41 religion in establishing and utilizing criteria for employment of an
42 employee; provided further, that it shall not be an unlawful
43 employment practice to require the retirement of any employee
44 who, for the two-year period immediately before retirement, is
45 employed in a bona fide executive or a high policy-making position,

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.

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1 if that employee is entitled to an immediate non-forfeitable annual
2 retirement benefit from a pension, profit sharing, savings or
3 deferred retirement plan, or any combination of those plans, of the
4 employer of that employee which equals in the aggregate at least
5 \$27,000.00; and provided further that an employer may restrict
6 employment to citizens of the United States where such restriction
7 is required by federal law or is otherwise necessary to protect the
8 national interest.

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

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

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

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

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

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

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

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

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

22 g. For any person, including but not limited to, any owner,
23 lessee, sublessee, assignee or managing agent of, or other person
24 having the right of ownership or possession of or the right to sell,
25 rent, lease, assign, or sublease any real property or part or portion
26 thereof, or any agent or employee of any of these:

27 (1) 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 race, creed, color,
30 national origin, ancestry, marital status, civil union status, domestic
31 partnership status, pregnancy, sex, gender identity or expression,
32 affectional or sexual orientation, familial status, disability,
33 nationality, or source of lawful income used for rental or mortgage
34 payments;

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

44 (3) To print, publish, circulate, issue, display, post or mail, or
45 cause to be printed, published, circulated, issued, displayed, posted
46 or mailed any statement, advertisement, publication or sign, or to
47 use any form of application for the purchase, rental, lease,
48 assignment or sublease of any real property or part or portion

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

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

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

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

36 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
37 sale, rental, lease, assignment, or sublease any real property or part
38 or portion thereof to any person or group of persons or to refuse to
39 negotiate for the sale, rental, lease, assignment, or sublease of any
40 real property or part or portion thereof to any person or group of
41 persons because of race, creed, color, national origin, ancestry,
42 marital status, civil union status, domestic partnership status,
43 familial status, pregnancy, sex, gender identity or expression,
44 affectional or sexual orientation, disability, nationality, or source of
45 lawful income used for rental or mortgage payments, or to represent
46 that any real property or portion thereof is not available for
47 inspection, sale, rental, lease, assignment, or sublease when in fact
48 it is so available, or otherwise to deny or withhold any real property

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1 or any part or portion of facilities thereof to or from any person or
2 group of persons because of race, creed, color, national origin,
3 ancestry, marital status, civil union status, domestic partnership
4 status, familial status, pregnancy, sex, gender identity or expression,
5 affectional or sexual orientation, disability or nationality;

6 (2) To discriminate against any person because of race, creed,
7 color, national origin, ancestry, marital status, civil union status,
8 domestic partnership status, familial status, pregnancy, sex, gender
9 identity or expression, affectional or sexual orientation, disability,
10 nationality, or source of lawful income used for rental or mortgage
11 payments in the terms, conditions or privileges of the sale, rental,
12 lease, assignment or sublease of any real property or part or portion
13 thereof or in the furnishing of facilities or services in connection
14 therewith;

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

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

46 (5) To refuse to rent or lease any real property to another person
47 because that person's family includes children under 18 years of
48 age, or to make an agreement, rental or lease of any real property

1 which provides that the agreement, rental or lease shall be rendered
2 null and void upon the birth of a child. This paragraph shall not
3 apply to housing for older persons as defined in subsection mm. of
4 section 5 of P.L.1945, c.169 (C.10:5-5).

5 i. For any person, bank, banking organization, mortgage
6 company, insurance company or other financial institution, lender
7 or credit institution involved in the making or purchasing of any
8 loan or extension of credit, for whatever purpose, whether secured
9 by residential real estate or not, including but not limited to
10 financial assistance for the purchase, acquisition, construction,
11 rehabilitation, repair or maintenance of any real property or part or
12 portion thereof or any agent or employee thereof:

13 (1) To discriminate against any person or group of persons
14 because of race, creed, color, national origin, ancestry, marital
15 status, civil union status, domestic partnership status, pregnancy,
16 sex, gender identity or expression, affectional or sexual orientation,
17 disability, familial status or nationality, in the granting,
18 withholding, extending, modifying, renewing, or purchasing, or in
19 the fixing of the rates, terms, conditions or provisions of any such
20 loan, extension of credit or financial assistance or purchase thereof
21 or in the extension of services in connection therewith;

22 (2) To use any form of application for such loan, extension of
23 credit or financial assistance or to make record or inquiry in
24 connection with applications for any such loan, extension of credit
25 or financial assistance which expresses, directly or indirectly, any
26 limitation, specification or discrimination as to race, creed, color,
27 national origin, ancestry, marital status, civil union status, domestic
28 partnership status, pregnancy, sex, gender identity or expression,
29 affectional or sexual orientation, disability, familial status or
30 nationality or any intent to make any such limitation, specification
31 or discrimination; unless otherwise required by law or regulation to
32 retain or use such information;

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

34 (4) To discriminate against any person or group of persons
35 because of the source of any lawful income received by the person
36 or the source of any lawful rent payment to be paid for the real
37 property; or

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

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

1 k. For any real estate broker, real estate salesperson or
2 employee or agent thereof or any other individual, corporation,
3 partnership, or organization, for the purpose of inducing a
4 transaction for the sale or rental of real property from which
5 transaction such person or any of its members may benefit
6 financially, to represent that a change has occurred or will or may
7 occur in the composition with respect to race, creed, color, national
8 origin, ancestry, marital status, civil union status, domestic
9 partnership status, familial status, pregnancy, sex, gender identity or
10 expression, affectional or sexual orientation, disability, nationality,
11 or source of lawful income used for rental or mortgage payments of
12 the owners or occupants in the block, neighborhood or area in
13 which the real property is located, and to represent, directly or
14 indirectly, that this change will or may result in undesirable
15 consequences in the block, neighborhood or area in which the real
16 property is located, including, but not limited to the lowering of
17 property values, an increase in criminal or anti-social behavior, or a
18 decline in the quality of schools or other facilities.

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

35 m. For any person to:

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

1 superintendents, agents, employees, business associates, suppliers,
2 or customers.

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

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

16 n. For any person to aid, abet, incite, compel, coerce, or induce
17 the doing of any act forbidden by subsections l. and m. of section
18 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
19 do so. 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
23 because that person does, or agrees or attempts to do, any such act
24 or any act prohibited by this subsection; or

25 (2) Boycotting, commercially blacklisting or refusing to buy
26 from, sell to, lease from or to, license, contract with, provide goods,
27 services or information to, or otherwise do business with any person
28 because that person has not done or refuses to do any such act or
29 any act prohibited by this subsection; provided that this subsection
30 shall 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 o. For any multiple listing service, real estate brokers'
35 organization or other service, organization or facility related to the
36 business of selling or renting dwellings to deny any person access
37 to or membership or participation in such organization, or to
38 discriminate against such person in the terms or conditions of such
39 access, membership, or participation, on account of race, creed,
40 color, national origin, ancestry, age, marital status, civil union
41 status, domestic partnership status, familial status, pregnancy, sex,
42 gender identity or expression, affectional or sexual orientation,
43 disability or nationality.

44 p. Nothing in the provisions of this section shall affect the
45 ability of an employer to require employees to adhere to reasonable
46 workplace appearance, grooming and dress standards not precluded
47 by other provisions of State or federal law, except that an employer

1 shall allow an employee to appear, groom and dress consistent with
2 the employee's gender identity or expression.

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

21 (a) The number of the hours worked by the employee which are
22 counted towards the accruing of seniority, pension or other benefits;
23 or

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

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

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

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

3 (i) The identifiable cost of the accommodation, including the
4 costs of loss of productivity and of retaining or hiring employees or
5 transferring employees from one facility to another, in relation to
6 the size and operating cost of the employer.

7 (ii) The number of individuals who will need the particular
8 accommodation for a sincerely held religious observance or
9 practice.

10 (iii) For an employer with multiple facilities, the degree to which
11 the geographic separateness or administrative or fiscal relationship
12 of the facilities will make the accommodation more difficult or
13 expensive.

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

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

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

27 r. For any employer to take reprisals against any employee for
28 requesting from any other employee or former employee of the
29 employer information regarding the job title, occupational category,
30 and rate of compensation, including benefits, of any employee or
31 former employee of the employer, or the gender, race, ethnicity,
32 military status, or national origin of any employee or former
33 employee of the employer, regardless of whether the request was
34 responded to, if the purpose of the request for the information was
35 to assist in investigating the possibility of the occurrence of, or in
36 taking of legal action regarding, potential discriminatory treatment
37 concerning pay, compensation, bonuses, other compensation, or
38 benefits. Nothing in this subsection shall be construed to require an
39 employee to disclose such information about the employee herself
40 to any other employee or former employee of the employer or to
41 any authorized representative of the other employee or former
42 employee.

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

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

20 For the purposes of this section "pregnancy" means pregnancy,
21 childbirth, or medical conditions related to pregnancy or childbirth,
22 including recovery from childbirth.

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

35 t. For an employer to:

36 (1) Require an employee or prospective employee to make the
37 waiver of rights granted under this or any other statute, rule or
38 regulation, including the right to a jury trial, public adjudication in
39 a court of law, discovery of evidence, compensatory damages,
40 punitive damages, attorney fees, or statute of limitations, a
41 condition of hiring, continued employment or compensation or a
42 term, condition or privilege of employment:

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

45 (3) Harass, discharge, expel or otherwise discriminate against
46 any employee because that person has opposed any practices
47 forbidden under this subsection or that person has filed a complaint,

1 testified or assisted in any proceeding under this subsection.
2 (cf: P.L.2013, c.220, s.2)

3

4 2. Section 12 of P.L.1945, c.169 (C.10:5-13) is amended to read
5 as follows:

6 12. Any person claiming to be aggrieved by an unlawful
7 employment practice or an unlawful discrimination may, personally
8 or by an attorney-at-law, make, sign and file with the division a
9 verified complaint in writing which shall state the name and address
10 of the person, employer, labor organization, employment agency,
11 owner, lessee, proprietor, manager, superintendent, or agent alleged
12 to have committed the unlawful employment practice or unlawful
13 discrimination complained of and which shall set forth the
14 particulars thereof and shall contain such other information as may
15 be required by the division. Upon receipt of the complaint, the
16 division shall notify the complainant on a form promulgated by the
17 director of the division and approved by the Attorney General of the
18 complainant's rights under this act, including the right to file a
19 complaint in the Superior Court to be heard before a jury; of the
20 jurisdictional limitations of the division; and any other provisions of
21 this act, without interpretation, that may apply to the complaint. The
22 Commissioner of Labor, the Attorney General, or the Commissioner
23 of Education may, in like manner, make, sign and file such
24 complaint. Any employer whose employees, or some of them,
25 refuse or threaten to refuse to co-operate with the provisions of this
26 act, may file with the division a verified complaint asking for
27 assistance by conciliation or other remedial action.

28 Any complainant may initiate suit in Superior Court under this
29 act without first filing a complaint with the division or any
30 municipal office. An action under this act shall be commenced
31 within two years next after the cause of any such action shall have
32 accrued. Upon the application of any party, a jury trial shall be
33 directed to try the validity of any claim under this act specified in
34 the suit. All remedies available in common law tort actions shall be
35 available to prevailing plaintiffs. These remedies are in addition to
36 any provided by this act or any other statute. Prosecution of such
37 suit in Superior Court under this act shall bar the filing of a
38 complaint with the division or any municipal office during the
39 pendency of any such suit.

40 At any time after 180 days from the filing of a complaint with
41 the division, a complainant may file a request with the division to
42 present the action personally or through counsel to the Office of
43 Administrative Law. Upon such request, the director of the division
44 shall file the action with the Office of Administrative Law,
45 provided that no action may be filed with the Office of
46 Administrative Law where the director of the division has found
47 that no probable cause exists to credit the allegations of the
48 complaint or has otherwise dismissed the complaint.

1 A party to an action based upon a violation of this act shall mail
2 a copy of the initial pleadings or claims, amended pleadings or
3 claims, counterclaims, briefs, and legal memoranda to the division
4 at the same time as filing such documents with the Office of
5 Administrative Law or the court. Upon application to the Office of
6 Administrative Law or to the court wherein the matter is pending,
7 the division shall be permitted to intervene.

8 (cf: P.L.1990, c.12, s.2)

9
10 3. This act shall take effect immediately.

11 12 13 STATEMENT

14
15 This bill codifies the recent New Jersey Supreme Court case of
16 Rodriguez v. Raymours Furniture Co., 2016 N.J.LEXIS 566 (June
17 15, 2016) which held that an employment contract cannot frustrate
18 the public purpose of the “Law Against Discrimination,” P.L.1945,
19 c.169 (C.10:5-1 et seq.) (LAD) by shortening the statute of
20 limitations period for such claims. The bill amends the LAD to
21 prohibit any employer from requiring an employee or prospective
22 employee to make the waiver of rights granted under LAD or any
23 other statute, rule or regulation, including the right to a jury trial,
24 public adjudication in a court of law, discovery of evidence,
25 compensatory damages, punitive damages, attorney fees, or statute
26 of limitations, a condition of hiring, continued employment or
27 compensation or a term, condition or privilege of employment. The
28 bill also prohibits an employer from requesting any employee or
29 prospective employee to waive any claims prior to the existence of
30 an actual dispute. And, finally the bill prohibits an employer from
31 harassing, discharging, expelling or otherwise discriminating
32 against any employee because that person has opposed any
33 practices forbidden under this subsection or that person has filed a
34 complaint, testified or assisted in any proceeding under this
35 subsection.

36 In addition, this bill codifies the holding in Montells v. Haynes,
37 133 N.J. 282 (1993) where the court determined that applicable
38 statute of limitations for all actions under the LAD is the same two-
39 year statute of limitations which applies to personal injury cases,
40 N.J.S.2A:14-2. Under the bill, a person may bring an action under
41 the LAD within two years next after the cause of any such action
42 shall have accrued. The Montells court noted that the two-year
43 statute for personal injury claims “more closely comports with the
44 purpose of the LAD.” Id. at 291-292. As the court most recently in
45 the Rodriguez case noted, “[T] twenty three years later, the
46 Legislature has registered “the tacit approval of that determination
47 [Montells]. The lack of legislative action to signal disavowal of the
48 two-year limitations period is significant in light of the many times

1 since Montells was decided that the Legislature has taken
2 affirmative steps to amend the LAD in other respects.” Id.
3 Rodriguez v. Raymours Furniture Co., 2016 N.J.LEXIS 566, at 26
4 (June 15, 2016).

5 It is the sponsor’s intent for the Legislature not simply to register
6 “tacit approval” of a two-year statute of limitations but rather to
7 affirmatively act to strengthen the LAD by providing specific
8 statutory language concerning the two-year statute of limitations
9 and employment contract waiver provisions.