

ASSEMBLY, No. 273

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JOHN ARMATO

District 2 (Atlantic)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Co-Sponsored by:

Assemblymen Calabrese and Mazzeo

SYNOPSIS

Concerns sexual harassment.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning sexual harassment and amending P.L.1945,
2 c.169.

3

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

6

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

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

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

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

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

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

20 For the purposes of this subsection, an unlawful employment
21 practice occurs, with respect to discrimination in compensation or
22 in the financial terms or conditions of employment, each occasion
23 that an individual is affected by application of a discriminatory
24 compensation decision or other practice, including, but not limited
25 to, each occasion that wages, benefits, or other compensation are
26 paid, resulting in whole or in part from the decision or other
27 practice.

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

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

45 b. For a labor organization, because of the race, creed, color,
46 national origin, ancestry, age, marital status, civil union status,
47 domestic partnership status, affectional or sexual orientation,
48 gender identity or expression, disability, pregnancy or

1 breastfeeding, or sex of any individual, or because of the liability
2 for service in the Armed Forces of the United States or nationality
3 of any individual, to exclude or to expel from its membership such
4 individual or to discriminate in any way against any of its members,
5 against any applicant for, or individual included in, any apprentice
6 or other training program or against any employer or any individual
7 employed by an employer; provided, however, that nothing herein
8 contained shall be construed to bar a labor organization from
9 excluding from its apprentice or other training programs any person
10 on the basis of sex in those certain circumstances where sex is a
11 bona fide occupational qualification reasonably necessary to the
12 normal operation of the particular apprentice or other training
13 program.

14 c. For any employer or employment agency to print or circulate
15 or cause to be printed or circulated any statement, advertisement or
16 publication, or to use any form of application for employment, or to
17 make an inquiry in connection with prospective employment, which
18 expresses, directly or indirectly, any limitation, specification or
19 discrimination as to race, creed, color, national origin, ancestry,
20 age, marital status, civil union status, domestic partnership status,
21 affectional or sexual orientation, gender identity or expression,
22 disability, nationality, pregnancy or breastfeeding, or sex or liability
23 of any applicant for employment for service in the Armed Forces of
24 the United States, or any intent to make any such limitation,
25 specification or discrimination, unless based upon a bona fide
26 occupational qualification.

27 d. For any person to take reprisals against any person because
28 that person has opposed any practices or acts forbidden under this
29 act or because that person has sought legal advice regarding rights
30 under this act, shared relevant information with legal counsel,
31 shared information with a governmental entity, or filed a complaint,
32 testified or assisted in any proceeding under this act or to coerce,
33 intimidate, threaten or interfere with any person in the exercise or
34 enjoyment of, or on account of that person having aided or
35 encouraged any other person in the exercise or enjoyment of, any
36 right granted or protected by this act.

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

40 f. (1) For any owner, lessee, proprietor, manager,
41 superintendent, agent, or employee of any place of public
42 accommodation directly or indirectly to refuse, withhold from or
43 deny to any person any of the accommodations, advantages,
44 facilities or privileges thereof, or to discriminate against any person
45 in the furnishing thereof, or directly or indirectly to publish,
46 circulate, issue, display, post or mail any written or printed
47 communication, notice, or advertisement to the effect that any of
48 the accommodations, advantages, facilities, or privileges of any

1 such place will be refused, withheld from, or denied to any person
2 on account of the race, creed, color, national origin, ancestry,
3 marital status, civil union status, domestic partnership status,
4 pregnancy or breastfeeding, sex, gender identity or expression,
5 affectional or sexual orientation, disability, liability for service in
6 the Armed Forces of the United States or nationality of such person,
7 or that the patronage or custom thereat of any person of any
8 particular race, creed, color, national origin, ancestry, marital status,
9 civil union status, domestic partnership status, pregnancy or
10 breastfeeding status, sex, gender identity or expression, affectional
11 or sexual orientation, disability, liability for service in the Armed
12 Forces of the United States or nationality is unwelcome,
13 objectionable or not acceptable, desired or solicited, and the
14 production of any such written or printed communication, notice or
15 advertisement, purporting to relate to any such place and to be made
16 by any owner, lessee, proprietor, superintendent or manager thereof,
17 shall be presumptive evidence in any action that the same was
18 authorized by such person; provided, however, that nothing
19 contained herein shall be construed to bar any place of public
20 accommodation which is in its nature reasonably restricted
21 exclusively to individuals of one sex, and which shall include but
22 not be limited to any summer camp, day camp, or resort camp,
23 bathhouse, dressing room, swimming pool, gymnasium, comfort
24 station, dispensary, clinic or hospital, or school or educational
25 institution which is restricted exclusively to individuals of one sex,
26 provided individuals shall be admitted based on their gender
27 identity or expression, from refusing, withholding from or denying
28 to any individual of the opposite sex any of the accommodations,
29 advantages, facilities or privileges thereof on the basis of sex;
30 provided further, that the foregoing limitation shall not apply to any
31 restaurant as defined in R.S.33:1-1 or place where alcoholic
32 beverages are served.

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

47 In addition to the penalties otherwise provided for a violation of
48 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)

1 of subsection f. of this section is the holder of an alcoholic beverage
2 license issued under the provisions of R.S.33:1-12 for that private
3 club or association, the matter shall be referred to the Director of
4 the Division of Alcoholic Beverage Control who shall impose an
5 appropriate penalty in accordance with the procedures set forth in
6 R.S.33:1-31.

7 g. For any person, including but not limited to, any owner,
8 lessee, sublessee, assignee or managing agent of, or other person
9 having the right of ownership or possession of or the right to sell,
10 rent, lease, assign, or sublease any real property or part or portion
11 thereof, or any agent or employee of any of these:

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

21 (2) To discriminate against any person or group of persons
22 because of race, creed, color, national origin, ancestry, marital
23 status, civil union status, domestic partnership status, pregnancy or
24 breastfeeding, sex, gender identity or expression, affectional or
25 sexual orientation, familial status, disability, liability for service in
26 the Armed Forces of the United States, nationality or source of
27 lawful income used for rental or mortgage payments in the terms,
28 conditions or privileges of the sale, rental or lease of any real
29 property or part or portion thereof or in the furnishing of facilities
30 or services in connection therewith;

31 (3) To print, publish, circulate, issue, display, post or mail, or
32 cause to be printed, published, circulated, issued, displayed, posted
33 or mailed any statement, advertisement, publication or sign, or to
34 use any form of application for the purchase, rental, lease,
35 assignment or sublease of any real property or part or portion
36 thereof, or to make any record or inquiry in connection with the
37 prospective purchase, rental, lease, assignment, or sublease of any
38 real property, or part or portion thereof which expresses, directly or
39 indirectly, any limitation, specification or discrimination as to race,
40 creed, color, national origin, ancestry, marital status, civil union
41 status, domestic partnership status, pregnancy or breastfeeding, sex,
42 gender identity, or expression, affectional or sexual orientation,
43 familial status, disability, liability for service in the Armed Forces
44 of the United States, nationality, or source of lawful income used
45 for rental or mortgage payments, or any intent to make any such
46 limitation, specification or discrimination, and the production of
47 any such statement, advertisement, publicity, sign, form of
48 application, record, or inquiry purporting to be made by any such

1 person shall be presumptive evidence in any action that the same
2 was authorized by such person; provided, however, that nothing
3 contained in this subsection shall be construed to bar any person
4 from refusing to sell, rent, lease, assign or sublease or from
5 advertising or recording a qualification as to sex for any room,
6 apartment, flat in a dwelling or residential facility which is planned
7 exclusively for and occupied by individuals of one sex to any
8 individual of the exclusively opposite sex on the basis of sex
9 provided individuals shall be qualified based on their gender
10 identity or expression;

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

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

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

25 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
26 sale, rental, lease, assignment, or sublease any real property or part
27 or portion thereof to any person or group of persons or to refuse to
28 negotiate for the sale, rental, lease, assignment, or sublease of any
29 real property or part or portion thereof to any person or group of
30 persons because of race, creed, color, national origin, ancestry,
31 marital status, civil union status, domestic partnership status,
32 familial status, pregnancy or breastfeeding, sex, gender identity or
33 expression, affectional or sexual orientation, liability for service in
34 the Armed Forces of the United States, disability, nationality, or
35 source of lawful income used for rental or mortgage payments, or to
36 represent that any real property or portion thereof is not available
37 for inspection, sale, rental, lease, assignment, or sublease when in
38 fact it is so available, or otherwise to deny or withhold any real
39 property or any part or portion of facilities thereof to or from any
40 person or group of persons because of race, creed, color, national
41 origin, ancestry, marital status, civil union status, domestic
42 partnership status, familial status, pregnancy or breastfeeding, sex,
43 gender identity or expression, affectional or sexual orientation,
44 liability for service in the Armed Forces of the United States,
45 disability or nationality;

46 (2) To discriminate against any person because of race, creed,
47 color, national origin, ancestry, marital status, civil union status,
48 domestic partnership status, familial status, pregnancy or

1 breastfeeding, sex, gender identity or expression, affectional or
2 sexual orientation, disability, nationality, or source of lawful
3 income used for rental or mortgage payments in the terms,
4 conditions or privileges of the sale, rental, lease, assignment or
5 sublease of any real property or part or portion thereof or in the
6 furnishing of facilities or services in connection therewith;

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

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

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

47 i. For any person, bank, banking organization, mortgage
48 company, insurance company or other financial institution, lender

1 or credit institution involved in the making or purchasing of any
2 loan or extension of credit, for whatever purpose, whether secured
3 by residential real estate or not, including but not limited to
4 financial assistance for the purchase, acquisition, construction,
5 rehabilitation, repair or maintenance of any real property or part or
6 portion thereof or any agent or employee thereof:

7 (1) To discriminate against any person or group of persons
8 because of race, creed, color, national origin, ancestry, marital
9 status, civil union status, domestic partnership 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, familial status or nationality, in the
13 granting, withholding, extending, modifying, renewing, or
14 purchasing, or in the fixing of the rates, terms, conditions or
15 provisions of any such loan, extension of credit or financial
16 assistance or purchase thereof or in the extension of services in
17 connection therewith;

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

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

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

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

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

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

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

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

34 m. For any person to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 r. For any employer to take reprisals against any employee for
26 requesting from, discussing with, or disclosing to, any other
27 employee or former employee of the employer, a lawyer from
28 whom the employee seeks legal advice, or any government agency
29 information regarding the job title, occupational category, and rate
30 of compensation, including benefits, of the employee or any other
31 employee or former employee of the employer, or the gender, race,
32 ethnicity, military status, or national origin of the employee or any
33 other employee or former employee of the employer, regardless of
34 whether the request was responded to, or to require, as a condition
35 of employment, any employee or prospective employee to sign a
36 waiver, or to otherwise require an employee or prospective
37 employee to agree, not to make those requests or disclosures.
38 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 or breastfeeding in a manner less favorable
46 than the treatment of other persons not affected by pregnancy or
47 breastfeeding but similar in their ability or inability to work. In
48 addition, an employer of an employee who is a woman affected by

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

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

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

41 t. For an employer to pay any of its employees who is a
42 member of a protected class at a rate of compensation, including
43 benefits, which is less than the rate paid by the employer to
44 employees who are not members of the protected class for
45 substantially similar work, when viewed as a composite of skill,
46 effort and responsibility. An employer who is paying a rate of
47 compensation in violation of this subsection shall not reduce the
48 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 u. For an employer or other person engaged in business to
34 engage in the sexual harassment of an employee, intern, volunteer,
35 client or customer of the business, or any person providing services
36 to the employer or business pursuant to a contract or agreement,
37 including an independent contractor, or any person applying for a
38 position as an employee, intern or volunteer, or any person seeking
39 a contract or agreement for business with the employer or person, or
40 for an employer or other person engaged in business to fail to
41 implement policies, or take actions which the employer or person
42 could be reasonably expected to undertake, to prevent sexual
43 harassment, in connection with that business, of employees, interns,
44 volunteers, contractors, clients and customers of that business.

45 For the purposes of this subsection u., "sexual harassment"
46 includes unwelcome sexual advances, requests for sexual favors,
47 sexually motivated physical contact or other verbal or physical
48 conduct or communication of a sexual nature when:

(3) That conduct or communication has the purpose or effect of substantially interfering with an individual's employment or business relationship, or creates an intimidating, hostile or offensive employment or business environment.

2. This act shall take effect immediately.

The bill defines “sexual harassment” as including unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

3. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment or business relationship, or creates an intimidating, hostile or offensive employment or business environment.