

ASSEMBLY, No. 2216

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 27 (Essex and Morris)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

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District 14 (Mercer and Middlesex)

Co-Sponsored by:

**Assemblyman Caputo, Assemblywomen Murphy, Lampitt, Downey,
Quijano, McKnight, Vainieri Huttle and Assemblyman Conaway**

SYNOPSIS

Expands “Law Against Discrimination” to apply to health programs and activities and to prohibit discrimination based on association with individuals in protected classes.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

3

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

6

7 1. (New section) a. It shall be an unlawful discrimination for
8 any entity that operates a health program or activity to:

9 (1) exclude any individual from participation in, deny any
10 individual the benefits of, or otherwise subject any individual to
11 discrimination under any health program or activity on the basis of
12 that individual's race, creed, color, national origin, nationality,
13 ancestry, age, marital status, civil union status, domestic partnership
14 status, affectional or sexual orientation, genetic information,
15 pregnancy status, breastfeeding status, sex, gender identity or
16 expression, disability or atypical hereditary cellular or blood trait of
17 any individual, or liability for service in the armed forces;

18 (2) aid or perpetuate discrimination against any person by
19 providing significant assistance to any entity or person that
20 discriminates on the basis of race, creed, color, national origin,
21 nationality, ancestry, age, marital status, civil union status, domestic
22 partnership status, affectional or sexual orientation, genetic
23 information, pregnancy status, breastfeeding status, sex, gender
24 identity or expression, disability or atypical hereditary cellular or
25 blood trait of any individual, or liability for service in the armed
26 forces;

27 (3) (a) directly or through contractual or other arrangements,
28 utilize criteria or methods of administration that have the effect of
29 subjecting individuals to discrimination on the basis of sex, or have
30 the effect of defeating or substantially impairing accomplishment of
31 the objectives of the program with respect to individuals on the
32 basis of sex; or

33 (b) make selections when determining the site or location of a
34 facility that have the effect of excluding individuals from, denying
35 them the benefits of, or subjecting them to discrimination under any
36 health program or activity on the basis of sex, or substantially
37 impairing the accomplishments of the program or activity on the
38 basis of sex.

39 Nothing in this paragraph shall be construed to prohibit an entity
40 from operating a sex-specific health program or activity, provided
41 that the entity demonstrates an exceedingly persuasive justification
42 that the sex-specific health program or activity is substantially
43 related to the achievement of an important health-related or
44 scientific objective;

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 (4) treat any individual in a manner inconsistent with that
2 individual's gender identity;
- 3 (5) fail to ensure that communications with individuals with
4 disabilities, including but not limited to individuals who are deaf or
5 hard of hearing, are as effective as communications with others in
6 the health program or activity and sufficient to ensure those
7 individuals an equal opportunity to participate in, and enjoy the
8 benefits of, the health program or activity, including, but not limited
9 to, providing, free of charge and in a timely manner, language
10 assistance services, interpreter and translation services to assist with
11 oral communications, and qualified translator services to assist with
12 oral and written communications;
- 13 (6) fail to ensure that, when newly constructing or making
14 alterations to all or any part of a facility, the affected portions of the
15 facility are accessible to individuals with disabilities, consistent
16 with the current applicable standards for accessible design adopted
17 pursuant to the "Americans with Disabilities Act of 1990," 42
18 U.S.C. s.12101 et seq.;
- 19 (7) fail to ensure that any health programs or activities provided
20 through electronic and information technology are accessible to
21 individuals with disabilities, unless doing so would result in undue
22 financial and administrative burdens or a fundamental alteration in
23 the nature of the health program or activity. In the event that
24 compliance would result in an undue financial and administrative
25 burden or a fundamental alteration in the nature of the health
26 program or activity, the entity shall provide information in a format
27 other than an electronic format that would not result in such undue
28 financial and administrative burdens or a fundamental alteration in
29 the nature of the health program or activity, provided that, to the
30 maximum extent possible, the entity shall ensure that individuals
31 with disabilities receive the benefits or services of the health
32 program or activity that are provided through electronic and
33 information technology;
- 34 (8) fail to make reasonable accommodations and modifications
35 to policies, practices, or procedures when necessary to grant an
36 individual with a disability an equal opportunity to participate in,
37 and enjoy the benefits of, the health program or activity, unless the
38 entity demonstrates that making the accommodations or
39 modifications would be an undue burden or would fundamentally
40 alter the nature of the health program or activity;
- 41 (9) engage in marketing practices or benefit designs that
42 discriminate on the basis of disability; or
- 43 (10) fail to provide meaningful access to individuals with limited
44 English proficiency who are eligible to receive the benefits or
45 services of the health program or activity, including, but not limited
46 to, providing, free of charge and in a timely manner, language
47 assistance services, interpreter and translation services to assist with

1 oral communications, and qualified translator services to assist with
2 written communications.

3 b. It shall be an unlawful discrimination for any entity
4 providing or administering a health benefits plan, to discriminate
5 against any individual on the basis of an individual's race, creed,
6 color, national origin, nationality, ancestry, age, marital status, civil
7 union status, domestic partnership status, affectional or sexual
8 orientation, genetic information, pregnancy status, breastfeeding
9 status, sex, gender identity or expression, disability or atypical
10 hereditary cellular or blood trait of any individual, or liability for
11 service in the armed forces, including by:

12 (1) denying, canceling, limiting, or refusing to issue or renew a
13 health benefits plan, or denying or limiting coverage of a claim, or
14 imposing additional cost sharing or other limitations on coverage,
15 on the basis of an individual's race, creed, color, national origin,
16 nationality, ancestry, age, marital status, civil union status, domestic
17 partnership status, affectional or sexual orientation, genetic
18 information, pregnancy status, breastfeeding status, sex, gender
19 identity or expression, disability or atypical hereditary cellular or
20 blood trait of any individual, or liability for service in the armed
21 forces;

22 (2) having or implementing marketing practices or benefit
23 designs that discriminate on the basis of an individual's race, creed,
24 color, national origin, nationality, ancestry, age, marital status, civil
25 union status, domestic partnership status, affectional or sexual
26 orientation, genetic information, pregnancy status, breastfeeding
27 status, sex, gender identity or expression, disability or atypical
28 hereditary cellular or blood trait of any individual, or liability for
29 service in the armed forces;

30 (3) denying or limiting coverage, denying or limiting coverage
31 of a claim, or imposing additional cost sharing or other limitations
32 or restrictions on coverage for any health services to a transgender
33 individual that are ordinarily or exclusively available to individuals
34 of one sex if such denial, limitation, or other restriction is based on
35 the fact that the individual's sex assigned at birth, gender identity,
36 or gender otherwise recorded is different from the one to which
37 such health services are ordinarily or exclusively available;

38 (4) having or implementing a categorical coverage exclusion or
39 limitation for all health services related to gender transition; or

40 (5) otherwise denying or limiting coverage, denying or limiting
41 coverage of a claim, or imposing additional cost sharing limitations
42 or restrictions on coverage for specific health services related to
43 gender transition if such denial, limitation, or restriction results in
44 discrimination against a transgender individual.

45 For purposes of this subsection, "health benefits plan" means the
46 same as that term is defined in section 1 of P.L.1992, c.161
47 (C.17B:27A-2).

1 Nothing in this subsection shall be construed to determine, or
2 restrict an entity providing or administering a health benefits plan
3 from determining, whether a particular health service is medically
4 necessary or otherwise meets applicable coverage requirements in
5 any individual case.

6 c. Each entity that operates a health program or activity shall
7 take appropriate initial and continuing steps to notify beneficiaries,
8 enrollees, applicants, and members of the public that:

9 (1) the entity does not discriminate on the basis of race, creed,
10 color, national origin, nationality, ancestry, age, marital status, civil
11 union status, domestic partnership status, affectional or sexual
12 orientation, genetic information, pregnancy status, breastfeeding
13 status, sex, gender identity or expression, disability or atypical
14 hereditary cellular or blood trait of any individual, or liability for
15 service in the armed forces; and

16 (2) the entity complies with the other provisions of the "Law
17 Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

18 This notice shall be posted in a conspicuous physical location
19 where the entity interacts with the public and in a conspicuous
20 location on the entity's website, and shall include taglines in the 10
21 most common non-English languages spoken in the State. The
22 Division on Civil Rights shall make available on its website the
23 content of a sample notice that conveys the information required by
24 this provision, including the taglines in the ten most common non-
25 English languages spoken in the State.

26 d. Nothing in this section shall be construed to abrogate the
27 provisions of P.L.1974, c.111 (C.2A:65A-1 et seq.) or 42 U.S.C.
28 s.300a-7 et seq. with regard to any individual or entity.

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

32 5. As used in P.L.1945, c.169 (C.10:5-1 et seq.), unless a
33 different meaning clearly appears from the context:

34 a. "Person" includes one or more individuals, partnerships,
35 associations, organizations, labor organizations, corporations, legal
36 representatives, trustees, trustees in bankruptcy, receivers, and
37 fiduciaries.

38 b. "Employment agency" includes any person undertaking to
39 procure employees or opportunities for others to work.

40 c. "Labor organization" includes any organization which exists
41 and is constituted for the purpose, in whole or in part, of collective
42 bargaining, or of dealing with employers concerning grievances,
43 terms or conditions of employment, or of other mutual aid or
44 protection in connection with employment.

45 d. "Unlawful employment practice" and "unlawful
46 discrimination" include only those unlawful practices and acts
47 specified in section 11 of P.L.1945, c.169 (C.10:5-12).

- 1 e. "Employer" includes all persons as defined in subsection a.
2 of this section unless otherwise specifically exempt under another
3 section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State,
4 any political or civil subdivision thereof, and all public officers,
5 agencies, boards, or bodies.
- 6 f. "Employee" does not include any individual employed in the
7 domestic service of any person.
- 8 g. "Liability for service in the Armed Forces of the United
9 States" means subject to being ordered as an individual or member
10 of an organized unit into active service in the Armed Forces of the
11 United States by reason of membership in the National Guard, naval
12 militia or a reserve component of the Armed Forces of the United
13 States, or subject to being inducted into such armed forces through
14 a system of national selective service.
- 15 h. "Division" means the "Division on Civil Rights" created by
16 P.L.1945, c.169 (C.10:5-1 et seq.).
- 17 i. "Attorney General" means the Attorney General of the State
18 of New Jersey or the Attorney General's representative or designee.
- 19 j. "Commission" means the Commission on Civil Rights
20 created by P.L.1945, c.169 (C.10:5-1 et seq.).
- 21 k. "Director" means the Director of the Division on Civil
22 Rights.
- 23 l. "A place of public accommodation" shall include, but not be
24 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
25 summer camp, day camp, or resort camp, whether for entertainment
26 of transient guests or accommodation of those seeking health,
27 recreation, or rest; any producer, manufacturer, wholesaler,
28 distributor, retail shop, store, establishment, or concession dealing
29 with goods or services of any kind; any restaurant, eating house, or
30 place where food is sold for consumption on the premises; any
31 place maintained for the sale of ice cream, ice and fruit preparations
32 or their derivatives, soda water or confections, or where any
33 beverages of any kind are retailed for consumption on the premises;
34 any garage, any public conveyance operated on land or water or in
35 the air or any stations and terminals thereof; any bathhouse,
36 boardwalk, or seashore accommodation; any auditorium, meeting
37 place, or hall; any theatre, motion-picture house, music hall, roof
38 garden, skating rink, swimming pool, amusement and recreation
39 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
40 pool parlor, or other place of amusement; any comfort station; any
41 dispensary, clinic, or hospital; any public library; and any
42 kindergarten, primary and secondary school, trade or business
43 school, high school, academy, college and university, or any
44 educational institution under the supervision of the State Board of
45 Education or the Commissioner of Education of the State of New
46 Jersey. Nothing herein contained shall be construed to include or to
47 apply to any institution, bona fide club, or place of accommodation,
48 which is in its nature distinctly private; nor shall anything herein

1 contained apply to any educational facility operated or maintained
2 by a bona fide religious or sectarian institution, and the right of a
3 natural parent or one in loco parentis to direct the education and
4 upbringing of a child under his control is hereby affirmed; nor shall
5 anything herein contained be construed to bar any private secondary
6 or post-secondary school from using in good faith criteria other than
7 race, creed, color, national origin, ancestry, gender identity, or
8 expression or affectional or sexual orientation in the admission of
9 students.

10 m. "A publicly assisted housing accommodation" shall include
11 all housing built with public funds or public assistance pursuant to
12 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
13 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
14 c.184, and all housing financed in whole or in part by a loan,
15 whether or not secured by a mortgage, the repayment of which is
16 guaranteed or insured by the federal government or any agency
17 thereof.

18 n. The term "real property" includes real estate, lands,
19 tenements and hereditaments, corporeal and incorporeal, and
20 leaseholds, provided, however, that, except as to publicly assisted
21 housing accommodations, the provisions of this act shall not apply
22 to the rental: (1) of a single apartment or flat in a two-family
23 dwelling, the other occupancy unit of which is occupied by the
24 owner as a residence; or (2) of a room or rooms to another person or
25 persons by the owner or occupant of a one-family dwelling
26 occupied by the owner or occupant as a residence at the time of
27 such rental. Nothing herein contained shall be construed to bar any
28 religious or denominational institution or organization, or any
29 organization operated for charitable or educational purposes, which
30 is operated, supervised, or controlled by or in connection with a
31 religious organization, in the sale, lease, or rental of real property,
32 from limiting admission to or giving preference to persons of the
33 same religion or denomination or from making such selection as is
34 calculated by such organization to promote the religious principles
35 for which it is established or maintained. Nor does any provision
36 under this act regarding discrimination on the basis of familial
37 status apply with respect to housing for older persons.

38 o. "Real estate broker" includes a person, firm, or corporation
39 who, for a fee, commission, or other valuable consideration, or by
40 reason of promise or reasonable expectation thereof, lists for sale,
41 sells, exchanges, buys or rents, or offers or attempts to negotiate a
42 sale, exchange, purchase, or rental of real estate or an interest
43 therein, or collects or offers or attempts to collect rent for the use of
44 real estate, or solicits for prospective purchasers or assists or directs
45 in the procuring of prospects or the negotiation or closing of any
46 transaction which does or is contemplated to result in the sale,
47 exchange, leasing, renting, or auctioning of any real estate, or
48 negotiates, or offers or attempts or agrees to negotiate a loan

1 secured or to be secured by mortgage or other encumbrance upon or
2 transfer of any real estate for others; or any person who, for
3 pecuniary gain or expectation of pecuniary gain conducts a public
4 or private competitive sale of lands or any interest in lands. In the
5 sale of lots, the term "real estate broker" shall also include any
6 person, partnership, association, or corporation employed by or on
7 behalf of the owner or owners of lots or other parcels of real estate,
8 at a stated salary, or upon a commission, or upon a salary and
9 commission or otherwise, to sell such real estate, or any parts
10 thereof, in lots or other parcels, and who shall sell or exchange, or
11 offer or attempt or agree to negotiate the sale or exchange, of any
12 such lot or parcel of real estate.

13 p. "Real estate salesperson" includes any person who, for
14 compensation, valuable consideration or commission, or other thing
15 of value, or by reason of a promise or reasonable expectation
16 thereof, is employed by and operates under the supervision of a
17 licensed real estate broker to sell or offer to sell, buy or offer to buy
18 or negotiate the purchase, sale, or exchange of real estate, or offers
19 or attempts to negotiate a loan secured or to be secured by a
20 mortgage or other encumbrance upon or transfer of real estate, or to
21 lease or rent, or offer to lease or rent any real estate for others, or to
22 collect rents for the use of real estate, or to solicit for prospective
23 purchasers or lessees of real estate, or who is employed by a
24 licensed real estate broker to sell or offer to sell lots or other parcels
25 of real estate, at a stated salary, or upon a commission, or upon a
26 salary and commission, or otherwise to sell real estate, or any parts
27 thereof, in lots or other parcels.

28 q. "Disability" means physical or sensory disability, infirmity,
29 malformation, or disfigurement which is caused by bodily injury,
30 birth defect, or illness including epilepsy and other seizure
31 disorders, and which shall include, but not be limited to, any degree
32 of paralysis, amputation, lack of physical coordination, blindness or
33 visual impairment, deafness or hearing impairment, muteness or
34 speech impairment, or physical reliance on a service or guide dog,
35 wheelchair, or other remedial appliance or device, or any mental,
36 psychological, or developmental disability, including autism
37 spectrum disorders, resulting from anatomical, psychological,
38 physiological, or neurological conditions which prevents the typical
39 exercise of any bodily or mental functions or is demonstrable,
40 medically or psychologically, by accepted clinical or laboratory
41 diagnostic techniques. Disability shall also mean AIDS or HIV
42 infection.

43 r. "Blind person" or "person who is blind" means any
44 individual whose central visual acuity does not exceed 20/200 in the
45 better eye with correcting lens or whose visual acuity is better than
46 20/200 if accompanied by a limit to the field of vision in the better
47 eye to such a degree that its widest diameter subtends an angle of
48 no greater than 20 degrees.

- 1 s. "Guide dog" means a dog used to assist persons who are
2 deaf, or which is fitted with a special harness so as to be suitable as
3 an aid to the mobility of a person who is blind, and is used by a
4 person who is blind and has satisfactorily completed a specific
5 course of training in the use of such a dog, and has been trained by
6 an organization generally recognized by agencies involved in the
7 rehabilitation of persons with disabilities, including, but not limited
8 to, those persons who are blind or deaf, as reputable and competent
9 to provide dogs with training of this type.
- 10 t. "Guide or service dog trainer" means any person who is
11 employed by an organization generally recognized by agencies
12 involved in the rehabilitation of persons with disabilities, including,
13 but not limited to, those persons who are blind, have visual
14 impairments, or are deaf or have hearing impairments, as reputable
15 and competent to provide dogs with training, as defined in this
16 section, and who is actually involved in the training process.
- 17 u. "Housing accommodation" means any publicly assisted
18 housing accommodation or any real property, or portion thereof,
19 which is used or occupied, or is intended, arranged, or designed to
20 be used or occupied, as the home, residence, or sleeping place of
21 one or more persons, but shall not include any single family
22 residence the occupants of which rent, lease, or furnish for
23 compensation not more than one room therein.
- 24 v. "Public facility" means any place of public accommodation
25 and any street, highway, sidewalk, walkway, public building, and
26 any other place or structure to which the general public is regularly,
27 normally, or customarily permitted or invited.
- 28 w. "Deaf person" or "person who is deaf" means any person
29 whose hearing is so severely impaired that the person is unable to
30 hear and understand conversational speech through the unaided ear
31 alone, and who must depend primarily on an assistive listening
32 device or visual communication such as writing, lip reading, sign
33 language, and gestures.
- 34 x. "Atypical hereditary cellular or blood trait" means sickle cell
35 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
36 fibrosis trait.
- 37 y. "Sickle cell trait" means the condition wherein the major
38 natural hemoglobin components present in the blood of the
39 individual are hemoglobin A (normal) and hemoglobin S (sickle
40 hemoglobin) as defined by standard chemical and physical analytic
41 techniques, including electrophoresis; and the proportion of
42 hemoglobin A is greater than the proportion of hemoglobin S or one
43 natural parent of the individual is shown to have only normal
44 hemoglobin components (hemoglobin A, hemoglobin A2,
45 hemoglobin F) in the normal proportions by standard chemical and
46 physical analytic tests.
- 47 z. "Hemoglobin C trait" means the condition wherein the major
48 natural hemoglobin components present in the blood of the

- 1 individual are hemoglobin A (normal) and hemoglobin C as defined
2 by standard chemical and physical analytic techniques, including
3 electrophoresis; and the proportion of hemoglobin A is greater than
4 the proportion of hemoglobin C or one natural parent of the
5 individual is shown to have only normal hemoglobin components
6 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
7 proportions by standard chemical and physical analytic tests.
- 8 aa. "Thalassemia trait" means the presence of the thalassemia
9 gene which in combination with another similar gene results in the
10 chronic hereditary disease Cooley's anemia.
- 11 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
12 which in combination with another similar gene results in the
13 chronic hereditary disease Tay-Sachs.
- 14 cc. "Cystic fibrosis trait" means the presence of the cystic
15 fibrosis gene which in combination with another similar gene
16 results in the chronic hereditary disease cystic fibrosis.
- 17 dd. "Service dog" means any dog individually trained to the
18 requirements of a person with a disability including, but not limited
19 to minimal protection work, rescue work, pulling a wheelchair or
20 retrieving dropped items. This term shall include a "seizure dog"
21 trained to alert or otherwise assist persons with epilepsy or other
22 seizure disorders.
- 23 ee. "Qualified Medicaid applicant" means an individual who is a
24 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).
- 25 ff. "AIDS" means acquired immune deficiency syndrome as
26 defined by the Centers for Disease Control and Prevention of the
27 United States Public Health Service.
- 28 gg. "HIV infection" means infection with the human
29 immunodeficiency virus or any other related virus identified as a
30 probable causative agent of AIDS.
- 31 hh. "Affectional or sexual orientation" means male or female
32 heterosexuality, homosexuality, or bisexuality by inclination,
33 practice, identity, or expression, having a history thereof or being
34 perceived, presumed, or identified by others as having such an
35 orientation.
- 36 ii. "Heterosexuality" means affectional, emotional, or physical
37 attraction or behavior which is primarily directed towards persons
38 of the other gender.
- 39 jj. "Homosexuality" means affectional, emotional, or physical
40 attraction or behavior which is primarily directed towards persons
41 of the same gender.
- 42 kk. "Bisexuality" means affectional, emotional, or physical
43 attraction or behavior which is directed towards persons of either
44 gender.
- 45 ll. "Familial status" means being the natural parent of a child,
46 the adoptive parent of a child, the resource family parent of a child,
47 having a "parent and child relationship" with a child as defined by
48 State law, or having sole or joint legal or physical custody, care,

1 guardianship, or visitation with a child, or any person who is
2 pregnant or is in the process of securing legal custody of any
3 individual who has not attained the age of 18 years.

4 mm. "Housing for older persons" means housing:

5 (1) provided under any State program that the Attorney General
6 determines is specifically designed and operated to assist persons
7 who are elderly (as defined in the State program); or provided under
8 any federal program that the United States Department of Housing
9 and Urban Development determines is specifically designed and
10 operated to assist persons who are elderly (as defined in the federal
11 program); or

12 (2) intended for, and solely occupied by, persons 62 years of age
13 or older; or

14 (3) intended and operated for occupancy by at least one person
15 55 years of age or older per unit. In determining whether housing
16 qualifies as housing for older persons under this paragraph, the
17 Attorney General shall adopt regulations which require at least the
18 following factors:

19 (a) the existence of significant facilities and services
20 specifically designed to meet the physical or social needs of older
21 persons, or if the provision of such facilities and services is not
22 practicable, that such housing is necessary to provide important
23 housing opportunities for older persons; and

24 (b) that at least 80 percent of the units are occupied by at least
25 one person 55 years of age or older per unit; and

26 (c) the publication of, and adherence to, policies and procedures
27 which demonstrate an intent by the owner or manager to provide
28 housing for persons 55 years of age or older.

29 Housing shall not fail to meet the requirements for housing for
30 older persons by reason of: persons residing in such housing as of
31 September 13, 1988 not meeting the age requirements of this
32 subsection, provided that new occupants of such housing meet the
33 age requirements of this subsection; or unoccupied units, provided
34 that such units are reserved for occupancy by persons who meet the
35 age requirements of this subsection.

36 nn. "Genetic characteristic" means any inherited gene or
37 chromosome, or alteration thereof, that is scientifically or medically
38 believed to predispose an individual to a disease, disorder, or
39 syndrome, or to be associated with a statistically significant
40 increased risk of development of a disease, disorder, or syndrome.

41 oo. "Genetic information" means the information about genes,
42 gene products, or inherited characteristics that may derive from an
43 individual or family member.

44 pp. "Genetic test" means a test for determining the presence or
45 absence of an inherited genetic characteristic in an individual,
46 including tests of nucleic acids such as DNA, RNA, and
47 mitochondrial DNA, chromosomes, or proteins in order to identify a
48 predisposing genetic characteristic.

1 qq. "Domestic partnership" means a domestic partnership
2 established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

3 rr. "Gender identity or expression" means having or being
4 perceived as having a gender related identity or expression whether
5 or not stereotypically associated with a person's assigned sex at
6 birth.

7 ss. "Civil Union" means a legally recognized union of two
8 eligible individuals established pursuant to R.S.37:1-1 et seq. and
9 P.L.2006, c.103 (C.37:1-28 et al.).

10 tt. "Premium wages" means additional remuneration for night,
11 weekend, or holiday work, or for standby or irregular duty.

12 uu. "Premium benefit" means an employment benefit, such as
13 seniority, group life insurance, health insurance, disability
14 insurance, sick leave, annual leave, or an educational or pension
15 benefit that is greater than the employment benefit due the
16 employee for an equivalent period of work performed during the
17 regular work schedule of the employee.

18 vv. "Pregnancy" means pregnancy, childbirth, false pregnancy,
19 termination of pregnancy, or medical conditions related to
20 pregnancy or childbirth, including recovery from childbirth.

21 ww. "Breastfeeding" means breastfeeding, expressing milk for
22 breastfeeding, or medical conditions related to breastfeeding.

23 xx. "Health program or activity" means the provision or
24 administration of health-related services, health-related insurance
25 coverage, or other health-related coverage, and the provision of
26 assistance to individuals in obtaining health-related services or
27 health-related insurance coverage. For an entity principally
28 engaged in providing or administering health services or health
29 insurance coverage or other health coverage, all of its operations are
30 considered part of the health program or activity unless expressly
31 excluded pursuant to P.L.1945, c.169 (C.10:5-1 et seq.). Such
32 entities shall include a health care facility or long-term care facility
33 licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a
34 residential or community-based treatment facility, a health care
35 practice operated by a licensed or certified health care practitioner,
36 a health benefits plan or carrier, as those terms are defined in
37 section 2 of P.L.1997, c.192 (C.26:2S-2), or any similar entity, as
38 well as the operations of the State Medicaid and NJ FamilyCare
39 programs.

40 (cf: P.L.2017, c.131, s.8)

41

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

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

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

1 information, pregnancy **【or】** status, breastfeeding status, sex,
2 gender identity or expression, disability or atypical hereditary
3 cellular or blood trait of any individual, or because of the liability
4 for service in the Armed Forces of the United States or the
5 nationality of any individual, or because of the refusal to submit to
6 a genetic test or make available the results of a genetic test to an
7 employer, to refuse to hire or employ or to bar or to discharge or
8 require to retire, unless justified by lawful considerations other than
9 age, from employment such individual or to discriminate against
10 such individual in compensation or in terms, conditions or
11 privileges of employment; provided, however, it shall not be an
12 unlawful employment practice to refuse to accept for employment
13 an applicant who has received a notice of induction or orders to
14 report for active duty in the armed forces; provided further that
15 nothing herein contained shall be construed to bar an employer from
16 refusing to accept for employment any person on the basis of sex in
17 those certain circumstances where sex is a bona fide occupational
18 qualification, reasonably necessary to the normal operation of the
19 particular business or enterprise; provided further that nothing
20 herein contained shall be construed to bar an employer from
21 refusing to accept for employment or to promote any person over 70
22 years of age; provided further that it shall not be an unlawful
23 employment practice for a club exclusively social or fraternal to use
24 club membership as a uniform qualification for employment, or for
25 a 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
48 over a significant number of employees and a large volume of

1 business. A "high policy-making position" is a position in which a
2 person plays a significant role in developing policy and in
3 recommending the implementation thereof.

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

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

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

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

46 c. For any employer or employment agency to print or circulate
47 or cause to be printed or circulated any statement, advertisement or
48 publication, or to use any form of application for employment, or to

1 make an inquiry in connection with prospective employment, which
2 expresses, directly or indirectly, any limitation, specification or
3 discrimination as to race, creed, color, national origin, ancestry,
4 age, marital status, civil union status, domestic partnership status,
5 affectional or sexual orientation, gender identity or expression,
6 disability, nationality, pregnancy **【or】** status, breastfeeding status,
7 or sex or liability of any applicant for employment for service in the
8 Armed Forces of the United States, or any intent to make any such
9 limitation, specification or discrimination, unless based upon a bona
10 fide occupational qualification.

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

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

24 f. (1) For any owner, lessee, proprietor, manager,
25 superintendent, agent, or employee of any place of public
26 accommodation directly or indirectly to refuse, withhold from or
27 deny to any person any of the accommodations, advantages,
28 facilities or privileges thereof, or to discriminate against any person
29 in the furnishing thereof, or directly or indirectly to publish,
30 circulate, issue, display, post or mail any written or printed
31 communication, notice, or advertisement to the effect that any of
32 the accommodations, advantages, facilities, or privileges of any
33 such place will be refused, withheld from, or denied to any person
34 on account of the race, creed, color, national origin, ancestry,
35 marital status, civil union status, domestic partnership status,
36 pregnancy **【or】** status, breastfeeding status, sex, gender identity or
37 expression, affectional or sexual orientation, disability, liability for
38 service in the Armed Forces of the United States or nationality of
39 such person, or that the patronage or custom thereof of any person
40 of any particular race, creed, color, national origin, ancestry, marital
41 status, civil union status, domestic partnership status, pregnancy
42 **【or】** status, breastfeeding status, sex, gender identity or expression,
43 affectional or sexual orientation, disability, liability for service in
44 the Armed Forces of the United States or nationality is unwelcome,
45 objectionable or not acceptable, desired or solicited, and the
46 production of any such written or printed communication, notice or
47 advertisement, purporting to relate to any such place and to be made
48 by any owner, lessee, proprietor, superintendent or manager thereof,

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

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

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

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

44 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
45 to deny to or withhold from any person or group of persons any real
46 property or part or portion thereof because of race, creed, color,
47 national origin, ancestry, marital status, civil union status, domestic
48 partnership status, pregnancy **【or】** status, breastfeeding status, sex,

1 gender identity or expression, affectional or sexual orientation,
2 familial status, disability, liability for service in the Armed Forces
3 of the United States, nationality, or source of lawful income used
4 for rental or mortgage payments;

5 (2) To discriminate against any person or group of persons
6 because of race, creed, color, national origin, ancestry, marital
7 status, civil union status, domestic partnership status, pregnancy
8 **[or]** status, breastfeeding status, sex, gender identity or expression,
9 affectional or sexual orientation, familial status, disability, liability
10 for service in the Armed Forces of the United States, nationality or
11 source of lawful income used for rental or mortgage payments in
12 the terms, conditions or privileges of the sale, rental or lease of any
13 real property or part or portion thereof or in the furnishing of
14 facilities or services in connection 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, pregnancy **[or]** status,
26 breastfeeding status, sex, gender identity, or expression, affectional
27 or sexual orientation, familial status, disability, liability for service
28 in the Armed Forces of the United States, nationality, or source of
29 lawful income used for rental or mortgage payments, or any intent
30 to make any such limitation, specification or discrimination, and the
31 production of any such statement, advertisement, publicity, sign,
32 form of application, record, or inquiry purporting to be made by any
33 such person shall be presumptive evidence in any action that the
34 same was authorized by such person; provided, however, that
35 nothing contained in this subsection shall be construed to bar any
36 person from refusing to sell, rent, lease, assign or sublease or from
37 advertising or recording a qualification as to sex for any room,
38 apartment, flat in a dwelling or residential facility which is planned
39 exclusively for and occupied by individuals of one sex to any
40 individual of the exclusively opposite sex on the basis of sex
41 provided individuals shall be qualified based on their gender
42 identity or expression;

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

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

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

10 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
11 sale, rental, lease, assignment, or sublease any real property or part
12 or portion thereof to any person or group of persons or to refuse to
13 negotiate for the sale, rental, lease, assignment, or sublease of any
14 real property or part or portion thereof to any person or group of
15 persons because of race, creed, color, national origin, ancestry,
16 marital status, civil union status, domestic partnership status,
17 familial status, pregnancy **[or]** status, breastfeeding status, sex,
18 gender identity or expression, affectional or sexual orientation,
19 liability for service in the Armed Forces of the United States,
20 disability, nationality, or source of lawful income used for rental or
21 mortgage payments, or to represent that any real property or portion
22 thereof is not available for inspection, sale, rental, lease,
23 assignment, or sublease when in fact it is so available, or otherwise
24 to deny or withhold any real property or any part or portion of
25 facilities thereof to or from any person or group of persons because
26 of race, creed, color, national origin, ancestry, marital status, civil
27 union status, domestic partnership status, familial status, pregnancy
28 **[or]** status, breastfeeding status, sex, gender identity or expression,
29 affectional or sexual orientation, disability, liability for service in
30 the Armed Forces of the United States, or nationality;

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

41 (3) To print, publish, circulate, issue, display, post, or mail, or
42 cause to be printed, published, circulated, issued, displayed, posted
43 or mailed any statement, advertisement, publication or sign, or to
44 use any form of application for the purchase, rental, lease,
45 assignment, or sublease of any real property or part or portion
46 thereof or to make any record or inquiry in connection with the
47 prospective purchase, rental, lease, assignment, or sublease of any
48 real property or part or portion thereof which expresses, directly or

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

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

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

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

41 (1) To discriminate against any person or group of persons
42 because of race, creed, color, national origin, ancestry, marital
43 status, civil union status, domestic partnership status, pregnancy
44 **【or】** status, breastfeeding status, sex, gender identity or expression,
45 affectional or sexual orientation, disability, liability for service in
46 the Armed Forces of the United States, familial status or nationality,
47 in the granting, withholding, extending, modifying, renewing, or
48 purchasing, or in the fixing of the rates, terms, conditions or

1 provisions of any such loan, extension of credit or financial
2 assistance or purchase thereof or in the extension of services in
3 connection therewith;

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

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

17 (4) To discriminate against any person or group of persons
18 because of the source of any lawful income received by the person
19 or the source of any lawful rent payment to be paid for the real
20 property; or

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

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

32 k. For any real estate broker, real estate salesperson or
33 employee or agent thereof or any other individual, corporation,
34 partnership, or organization, for the purpose of inducing a
35 transaction for the sale or rental of real property from which
36 transaction such person or any of its members may benefit
37 financially, to represent that a change has occurred or will or may
38 occur in the composition with respect to race, creed, color, national
39 origin, ancestry, marital status, civil union status, domestic
40 partnership status, familial status, pregnancy **【or】** status,
41 breastfeeding status, sex, gender identity or expression, affectional
42 or sexual orientation, disability, liability for service in the Armed
43 Forces of the United States, nationality, or source of lawful income
44 used for rental or mortgage payments of the owners or occupants in
45 the block, neighborhood or area in which the real property is
46 located, and to represent, directly or indirectly, that this change will
47 or may result in undesirable consequences in the block,
48 neighborhood or area in which the real property is located,

1 including, but not limited to the lowering of property values, an
2 increase in criminal or anti-social behavior, or a decline in the
3 quality of schools or other facilities.

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

21 m. For any person to:

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

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

41 The provisions of this subsection shall not apply to any letter of
42 credit, contract, or other document which contains any provision
43 pertaining to employee-employer collective bargaining, a labor
44 dispute or an unfair labor practice, or made in connection with the
45 protest of unlawful discrimination or an unlawful employment
46 practice, if the other provisions of such letter of credit, contract, or
47 other document do not otherwise violate the provisions of this
48 subsection.

1 n. For any person to aid, abet, incite, compel, coerce, or induce
2 the doing of any act forbidden by subsections l. and m. of section
3 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
4 do so. Such prohibited conduct shall include, but not be limited to:

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

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

19 o. For any multiple listing service, real estate brokers'
20 organization or other service, organization or facility related to the
21 business of selling or renting dwellings to deny any person access
22 to or membership or participation in such organization, or to
23 discriminate against such person in the terms or conditions of such
24 access, membership, or participation, on account of race, creed,
25 color, national origin, ancestry, age, marital status, civil union
26 status, domestic partnership status, familial status, pregnancy **[or]**
27 status, breastfeeding status, sex, gender identity or expression,
28 affectional or sexual orientation, disability, liability for service in
29 the Armed Forces of the United States or nationality.

30 p. Nothing in the provisions of this section shall affect the
31 ability of an employer to require employees to adhere to reasonable
32 workplace appearance, grooming and dress standards not precluded
33 by other provisions of State or federal law, except that an employer
34 shall allow an employee to appear, groom and dress consistent with
35 the employee's gender identity or expression.

36 q. (1) For any employer to impose upon a person as a
37 condition of obtaining or retaining employment, including
38 opportunities for promotion, advancement or transfers, any terms or
39 conditions that would require a person to violate or forego a
40 sincerely held religious practice or religious observance, including
41 but not limited to the observance of any particular day or days or
42 any portion thereof as a Sabbath or other holy day in accordance
43 with the requirements of the religion or religious belief, unless,
44 after engaging in a bona fide effort, the employer demonstrates that
45 it is unable to reasonably accommodate the employee's religious
46 observance or practice without undue hardship on the conduct of the
47 employer's business. Notwithstanding any other provision of law to
48 the contrary, an employee shall not be entitled to premium wages or

1 premium benefits for work performed during hours to which those
2 premium wages or premium benefits would ordinarily be
3 applicable, if the employee is working during those hours only as an
4 accommodation to his religious requirements. Nothing in this
5 subsection q. shall be construed as reducing:

6 (a) The number of the hours worked by the employee which are
7 counted towards the accruing of seniority, pension or other benefits;
8 or

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

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

27 (3) (a) For purposes of this subsection q., "undue hardship"
28 means an accommodation requiring unreasonable expense or
29 difficulty, unreasonable interference with the safe or efficient
30 operation of the workplace or a violation of a bona fide seniority
31 system or a violation of any provision of a bona fide collective
32 bargaining agreement.

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

35 (i) The identifiable cost of the accommodation, including the
36 costs of loss of productivity and of retaining or hiring employees or
37 transferring employees from one facility to another, in relation to
38 the size and operating cost of the employer.

39 (ii) The number of individuals who will need the particular
40 accommodation for a sincerely held religious observance or
41 practice.

42 (iii) For an employer with multiple facilities, the degree to
43 which the geographic separateness or administrative or fiscal
44 relationship of the facilities will make the accommodation more
45 difficult or expensive.

46 (c) An accommodation shall be considered to constitute an
47 undue hardship if it will result in the inability of an employee to

1 perform the essential functions of the position in which he or she is
2 employed.

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

7 (ii) This subsection q. shall not apply where the uniform
8 application of terms and conditions of attendance to employees is
9 essential to prevent undue hardship to the employer. The burden of
10 proof regarding the applicability of this subparagraph (d) shall be
11 upon the employer.

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

30 s. For an employer to treat, for employment-related purposes, a
31 woman employee that the employer knows, or should know, is
32 affected by pregnancy or breastfeeding in a manner less favorable
33 than the treatment of other persons not affected by pregnancy or
34 breastfeeding but similar in their ability or inability to work. In
35 addition, an employer of an employee who is a woman affected by
36 pregnancy shall make available to the employee reasonable
37 accommodation in the workplace, such as bathroom breaks, breaks
38 for increased water intake, periodic rest, assistance with manual
39 labor, job restructuring or modified work schedules, and temporary
40 transfers to less strenuous or hazardous work, for needs related to
41 the pregnancy when the employee, based on the advice of her
42 physician, requests the accommodation, and, in the case of a
43 employee breast feeding her infant child, the accommodation shall
44 include reasonable break time each day to the employee and a
45 suitable room or other location with privacy, other than a toilet stall,
46 in close proximity to the work area for the employee to express
47 breast milk for the child, unless the employer can demonstrate that
48 providing the accommodation would be an undue hardship on the

1 business operations of the employer. The employer shall not in any
2 way penalize the employee in terms, conditions or privileges of
3 employment for requesting or using the accommodation. Workplace
4 accommodation provided pursuant to this subsection and paid or
5 unpaid leave provided to an employee affected by pregnancy or
6 breastfeeding shall not be provided in a manner less favorable than
7 accommodations or leave provided to other employees not affected
8 by pregnancy or breastfeeding but similar in their ability or inability
9 to work. This subsection shall not be construed as otherwise
10 increasing or decreasing any employee's rights under law to paid or
11 unpaid leave in connection with pregnancy or breastfeeding.

12 **【For the purposes of this section "pregnancy or breastfeeding"**
13 **means pregnancy, childbirth, and breast feeding or expressing milk**
14 **for breastfeeding, or medical conditions related to pregnancy,**
15 **childbirth, or breastfeeding, including recovery from childbirth.】**

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

28 t. For an employer to pay any of its employees who is a
29 member of a protected class at a rate of compensation, including
30 benefits, which is less than the rate paid by the employer to
31 employees who are not members of the protected class for
32 substantially similar work, when viewed as a composite of skill,
33 effort and responsibility. An employer who is paying a rate of
34 compensation in violation of this subsection shall not reduce the
35 rate of compensation of any employee in order to comply with this
36 subsection. An employer may pay a different rate of compensation
37 only if the employer demonstrates that the differential is made
38 pursuant to a seniority system, a merit system, or the employer
39 demonstrates:

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

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

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

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

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

8 Comparisons of wage rates shall be based on wage rates in all of
9 an employer's operations or facilities. For the purposes of this
10 subsection, "member of a protected class" means an employee who
11 has one or more characteristics, including race, creed, color,
12 national origin, nationality, ancestry, age, marital status, civil union
13 status, domestic partnership status, affectional or sexual orientation,
14 genetic information, pregnancy, breastfeeding, sex, gender identity
15 or expression, disability or atypical hereditary cellular or blood trait
16 of any individual, or liability for service in the armed forces, for
17 which subsection a. of this section prohibits an employer from
18 refusing to hire or employ or barring or discharging or requiring to
19 retire from employment or discriminating against the individual in
20 compensation or in terms, conditions or privileges of employment.

21 u. To engage in any unlawful employment practice or unlawful
22 discrimination, as set forth in the "Law Against Discrimination,"
23 P.L.1945, c.169 (C.10:5-1 et seq.), against an individual on the basis
24 of the race, creed, color, national origin, nationality, ancestry, age,
25 marital status, civil union status, domestic partnership status,
26 affectional or sexual orientation, genetic information, pregnancy
27 status, breastfeeding status, sex, gender identity or expression,
28 disability or atypical hereditary cellular or blood trait of any
29 individual, or liability for service in the armed forces of another
30 individual with whom the individual is known or believed to have a
31 relationship or association.

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

33

34 4. This act shall take effect 180 days after the date of
35 enactment.

36

37

38 STATEMENT

39

40 This bill expands the "Law Against Discrimination" (LAD),
41 P.L.1945, c.169 (C.10:5-1 et seq.), to apply to health programs and
42 activities, which are defined in the bill to mean the provision or
43 administration of health-related services, health-related insurance
44 coverage or other health-related coverage, and the provision of
45 assistance to individuals in obtaining health-related services or health-
46 related insurance coverage. The entities the bill will apply to include,
47 but are not limited to, health care facilities, long-term care facilities,
48 residential and community-based treatment facilities, and health care

1 practices operated by a licensed or certified health care practitioner, as
2 well as health benefits plans, health benefits carriers, and the State
3 Medicaid and NJ FamilyCare programs.

4 The LAD generally prohibits discrimination in the workplace, in
5 places of public accommodation, and in transactions involving housing
6 and other real property against an individual based on the individual
7 being a member of a protected class, including race, creed, color,
8 national origin, nationality, ancestry, age, marital status, civil union
9 status, domestic partnership status, affectional or sexual orientation,
10 genetic information, pregnancy status, breastfeeding status, sex,
11 gender identity or expression, disability or atypical hereditary cellular
12 or blood trait of any individual, or liability for service in the armed
13 forces. In some cases, the LAD provides broad protections for all
14 protected classes; in other cases, it provides specific protections to
15 specific populations, such as workplace protections for women who
16 are pregnant or breastfeeding or for individuals to practice religious
17 observances.

18 The bill will expand the existing LAD protections to provide that it
19 will constitute unlawful discrimination for any entity that operates a
20 health program or activity to:

21 (1) exclude, deny, or otherwise discriminate against individual in a
22 health program or activity on the basis of the individual being a
23 member of any protected class;

24 (2) aid or perpetuate discrimination against any person by
25 providing significant assistance to any entity or person that
26 discriminates on the basis of any protected class;

27 (3) utilize criteria or methods of administration that have the effect
28 of discriminating on the basis of sex or, when making selections when
29 determining the site or location of a facility, have the effect of
30 excluding individuals from or denying them the benefits of, or
31 otherwise discriminating on the basis of sex;

32 (4) treat any individual in a manner inconsistent with that
33 individual's gender identity;

34 (5) fail to ensure that communications with individuals with
35 disabilities, including but not limited to individuals who are deaf or
36 hard of hearing, are as effective as communications with others in the
37 health program or activity and sufficient to ensure those individuals an
38 equal opportunity to participate in, and enjoy the benefits of, the health
39 program or activity;

40 (6) fail to ensure that, when newly constructing or making
41 alterations to all or part of a facility, the affected portions of the
42 facility are accessible to individuals with disabilities, consistent with
43 the current applicable standards for accessible design adopted pursuant
44 to the "Americans with Disabilities Act of 1990";

45 (7) fail to ensure that any health programs or activities provided
46 through electronic and information technology are accessible to
47 individuals with disabilities, unless doing so would result in undue

1 financial and administrative burdens or a fundamental alteration in the
2 nature of the health program or activity;

3 (8) fail to make reasonable accommodations and modifications to
4 policies, practices, or procedures when necessary to grant an
5 individual with a disability an equal opportunity to participate in, and
6 enjoy the benefits of, the health program or activity, unless the entity
7 demonstrates that making the accommodations or modifications would
8 be an undue burden or would fundamentally alter the nature of the
9 health program or activity;

10 (9) engage in marketing practices or benefit designs that
11 discriminate on the basis of disability; or

12 (10) fail to provide meaningful access to individuals with limited
13 English proficiency who are eligible to receive the benefits or services
14 of the health program or activity, including providing appropriate
15 interpretation and translation services for oral and written
16 communications, which may be provided in-person or electronically.

17 The bill provides that it is unlawful discrimination for any entity
18 providing or administering a health benefits plan to discriminate
19 against any individual on the basis of the individual being a member of
20 a protected class, including: denying, canceling, limiting, or refusing
21 to issue or renew a health benefits plan; denying or limiting coverage
22 of a claim; imposing additional cost sharing or other limitations on
23 coverage; having or implementing marketing practices or benefit
24 designs that discriminate on the basis of any protected class; having or
25 implementing a categorical coverage exclusion or limitation for all
26 health services related to gender transition; or otherwise engaging in
27 practices that discriminate against any transgender individual.

28 Nothing in the bill will be construed to abrogate the provisions of
29 P.L.1974, c.111 (C.2A:65A-1 et seq.) or 42 U.S.C. s.300a-7 et seq.,
30 which provide that no individual or health care facility may be
31 required to provide abortion or sterilization services or procedures.

32 Each entity that operates a health program or activity will be
33 required to provide notice to beneficiaries, enrollees, applicants, and
34 members of the public that: the entity does not discriminate on the
35 basis of any protected class; and the entity complies with the other
36 provisions of the “Law Against Discrimination.”

37 This notice is to be posted in a conspicuous physical location
38 where the entity interacts with the public and in a conspicuous location
39 on the entity’s web site, and must include taglines in the 10 most
40 common non-English languages spoken in the State.

41 The bill further prohibits any act of unlawful discrimination or any
42 unlawful employment practice when taken against an individual based
43 on the individual’s association with a member of any protected class.