ASSEMBLY, No. 2239

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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District 12 (Burlington, Middlesex, Monmouth and Ocean)
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District 7 (Burlington)

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SYNOPSIS

Clarifies that age restrictions may not be imposed to exclude disabled persons from housing.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 1/3/2022)

AN ACT concerning the applicability of age restrictions in housing for older persons to disabled dependents, and amending P.L.1972, c.114, P.L.1945, c.169, P.L.2008, c.71, and P.L.2014, c.6.

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

1. Section 2 of P.L.1972, c.114 (C.10:5-4.1) is amended to read as follows:

2. a. All of the provisions of the **[**act to which this act is a supplement**]** "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), shall be construed to prohibit any unlawful discrimination against any person because such person is or has been at any time disabled or any unlawful employment practice against such person, unless the nature and extent of the disability reasonably precludes the performance of the particular employment.

b. It shall be unlawful discrimination under the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) to discriminate against any buyer or renter because of the disability of a person residing in or intending to reside in a dwelling after it is sold, rented or made available, or because of any person associated with the buyer or renter. Unlawful discrimination under this subsection includes, but is not limited to, the refusal to sell or lease a unit in housing for older persons to a person who is 55 years of age or older based upon the age of a dependent child or other person who may reside in the unit, or upon familial status, if the dependent child or other person who may reside in the unit has a disability. A person having the right of ownership or possession of, or control over, a unit of housing in housing for older persons shall make reasonable accommodations in rules, policies, practices, or services in order to afford a disabled person an equal opportunity to use and enjoy a dwelling unit in the housing for older persons.

(cf: P.L.2003, c.180, s.5)

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

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

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

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

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.

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

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

e. "Employer" includes all persons as defined in subsection a. of this section unless otherwise specifically exempt under another section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards, or bodies.

f. "Employee" does not include any individual employed in the domestic service of any person.

g. "Liability for service in the Armed Forces of the United States" means subject to being ordered as an individual or member of an organized unit into active service in the Armed Forces of the United States by reason of membership in the National Guard, naval militia or a reserve component of the Armed Forces of the United States, or subject to being inducted into such armed forces through a system of national selective service.

h. "Division" means the "Division on Civil Rights" created by P.L.1945, c.169 (C.10:5-1 et seq.).

i. "Attorney General" means the Attorney General of the State of New Jersey or the Attorney General's representative or designee.

j. "Commission" means the Commission on Civil Rights created by P.L.1945, c.169 (C.10:5-1 et seq.).

k. "Director" means the Director of the Division on Civil Rights.

l. "A place of public accommodation" shall include, but not be limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation, or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage, any public conveyance operated on land or water or in the air or any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station; any

dispensary, clinic, or hospital; any public library; and any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education or the Commissioner of Education of the State of New Jersey. Nothing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or post-secondary school from using in good faith criteria other than race, creed, color, national origin, ancestry, gender identity, or expression or affectional or sexual orientation in the admission of students.

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

n. The term "real property" includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, and leaseholds, provided, however, that, except as to publicly assisted housing accommodations, the provisions of this act shall not apply to the rental: (1) of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence; or (2) of a room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence at the time of such rental. Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, in the sale, lease, or rental of real property, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. Nor does any provision under this act regarding discrimination on the basis of familial status apply with respect to housing for older persons<u>, except that a person shall not refuse to sell or lease a unit in housing for older persons to a person who is 55 years of age or older based upon the age of a dependent child or other person who may reside in the unit,</u>

or upon familial status, if the dependent child or other person who may reside in the unit has a disability.

o. "Real estate broker" includes a person, firm, or corporation who, for a fee, commission, or other valuable consideration, or by reason of promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting, or auctioning of any real estate, or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others; or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association, or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

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

q. "Disability" means physical or sensory disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impairment, or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental,

psychological, or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological, or neurological conditions which prevents the typical exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

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

s. "Guide dog" means a dog used to assist persons who are deaf, or which is fitted with a special harness so as to be suitable as an aid to the mobility of a person who is blind, and is used by a person who is blind and has satisfactorily completed a specific course of training in the use of such a dog, and has been trained by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities, including, but not limited to, those persons who are blind or deaf, as reputable and competent to provide dogs with training of this type.

t. "Guide or service dog trainer" means any person who is employed by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities, including, but not limited to, those persons who are blind, have visual impairments, or are deaf or have hearing impairments, as reputable and competent to provide dogs with training, as defined in this section, and who is actually involved in the training process.

u. "Housing accommodation" means any publicly assisted housing accommodation or any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

v. "Public facility" means any place of public accommodation and any street, highway, sidewalk, walkway, public building, and any other place or structure to which the general public is regularly, normally, or customarily permitted or invited.

w. "Deaf person" or "person who is deaf" means any person whose hearing is so severely impaired that the person is unable to hear and understand conversational speech through the unaided ear alone, and who must depend primarily on an assistive listening device or visual communication such as writing, lip reading, sign language, and gestures.

x. "Atypical hereditary cellular or blood trait" means sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic fibrosis trait.

y. "Sickle cell trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests.

z. "Hemoglobin C trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in normal proportions by standard chemical and physical analytic tests.

aa. "Thalassemia trait" means the presence of the thalassemia gene which in combination with another similar gene results in the chronic hereditary disease Cooley's anemia.

bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene which in combination with another similar gene results in the chronic hereditary disease Tay-Sachs.

cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis gene which in combination with another similar gene results in the chronic hereditary disease cystic fibrosis.

dd. "Service dog" means any dog individually trained to the requirements of a person with a disability including, but not limited to minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items. This term shall include a "seizure dog" trained to alert or otherwise assist persons with epilepsy or other seizure disorders.

ee. "Qualified Medicaid applicant" means an individual who is a qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

ff. "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

gg. "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

hh. "Affectional or sexual orientation" means male or female heterosexuality, homosexuality, or bisexuality by inclination, practice, identity, or expression, having a history thereof or being

perceived, presumed, or identified by others as having such an orientation.

ii. "Heterosexuality" means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the other gender.

jj. "Homosexuality" means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the same gender.

kk. "Bisexuality" means affectional, emotional, or physical attraction or behavior which is directed towards persons of either gender.

ll. "Familial status" means being the natural parent of a child, the adoptive parent of a child, the resource family parent of a child, having a "parent and child relationship" with a child as defined by State law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child, or any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

mm. "Housing for older persons" means housing:

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

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

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

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

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

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

Housing shall not fail to meet the requirements for housing for older persons by reason of: persons residing in such housing as of September 13, 1988 not meeting the age requirements of this subsection, provided that new occupants of such housing meet the age requirements of this subsection; or unoccupied units, provided

that such units are reserved for occupancy by persons who meet the age requirements of this subsection.

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

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

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

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

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

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

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

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

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

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

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

a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, to refuse to hire or employ or to bar or to discharge or require to retire, unless justified

by lawful considerations other than age, from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment; provided, however, it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification, reasonably necessary to the normal operation of the particular business or enterprise; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years of age; provided further that it shall not be an unlawful employment practice for a club exclusively social or fraternal to use club membership as a uniform qualification for employment, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee; provided further, that it shall not be an unlawful employment practice to require the retirement of any employee who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if that employee is entitled to an immediate non-forfeitable annual retirement benefit from a pension, profit sharing, savings or deferred retirement plan, or any combination of those plans, of the employer of that employee which equals in the aggregate at least $27,000.00; and provided further that an employer may restrict employment to citizens of the United States where such restriction is required by federal law or is otherwise necessary to protect the national interest.

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

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

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

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

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

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

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

f. (1) For any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof, or directly or indirectly to publish, circulate, issue, display, post or mail any written or printed communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, or privileges of any such place will be refused, withheld from, or denied to any person on account of the race, creed, color, national origin, ancestry,

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

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

In addition to the penalties otherwise provided for a violation of P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2) of subsection f. of this section is the holder of an alcoholic beverage license issued under the provisions of R.S.33:1-12 for that private

club or association, the matter shall be referred to the Director of the Division of Alcoholic Beverage Control who shall impose an appropriate penalty in accordance with the procedures set forth in R.S.33:1-31.

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

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

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

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment or sublease of any real property or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property, or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity, or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments, or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing

contained in this subsection shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied by individuals of one sex to any individual of the exclusively opposite sex on the basis of sex provided individuals shall be qualified based on their gender identity or expression;

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

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5), except that a person shall not refuse to rent or lease a unit in housing for older persons to a person who is 55 years of age or older based upon the age of a dependent child or other person who may reside in the unit, or upon familial status, if the dependent child or other person who may reside in the unit has a disability.

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

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

(2) To discriminate against any person because of race, creed, color, national origin, ancestry, marital status, civil union status,

domestic partnership status, familial status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental, lease, assignment or sublease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

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

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

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5), except that a person shall not refuse to rent or lease a unit in housing for older persons to a person who is 55 years of age or older based upon the age of a

dependent child or other person who may reside in the unit, or upon familial status, if the dependent child or other person who may reside in the unit has a disability.

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

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

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

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

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

(5) To discriminate against any person or group of persons because that person's family includes children under 18 years of age, or to make an agreement or mortgage which provides that the agreement or mortgage shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5), except that a person shall not discriminate against any person or group by limiting financial assistance for the purchase, acquisition, construction, rehabilitation, repair, or

maintenance of housing for older persons based upon the age of a dependent child or other person who may reside in a unit, or upon familial status, if a person who is 55 years of age or older will reside in the unit and the dependent child or other person who may reside in the unit has a disability.

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

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

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

m. For any person to:

(1) Grant or accept any letter of credit or other document which evidences the transfer of funds or credit, or enter into any contract

for the exchange of goods or services, where the letter of credit, contract, or other document contains any provisions requiring any person to discriminate against or to certify that he, she or it has not dealt with any other person on the basis of the race, creed, color, national origin, ancestry, age, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, marital status, civil union status, domestic partnership status, disability, liability for service in the Armed Forces of the United States, or nationality of such other person or of such other person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

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

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

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

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

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

o. For any multiple listing service, real estate brokers' organization or other service, organization or facility related to the business of selling or renting dwellings to deny any person access to or membership or participation in such organization, or to discriminate against such person in the terms or conditions of such

access, membership, or participation, on account of race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, familial status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality.

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

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

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

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

(2) For an employer to refuse to permit an employee to utilize leave, as provided for in this subsection q., which is solely used to accommodate the employee's sincerely held religious observance or practice. Except where it would cause an employer to incur an undue hardship, no person shall be required to remain at his place of employment during any day or days or portion thereof that, as a requirement of his religion, he observes as his Sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his place of employment and his home; provided that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay ordinarily granted,

other than sick leave, and any such absence not so made up or charged, may be treated by the employer of that person as leave taken without pay.

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

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

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

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

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

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

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

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

r. For any employer to take reprisals against any employee for requesting from any other employee or former employee of the employer information regarding the job title, occupational category, and rate of compensation, including benefits, of any employee or former employee of the employer, or the gender, race, ethnicity, military status, or national origin of any employee or former employee of the employer, regardless of whether the request was responded to, if the purpose of the request for the information was to assist in investigating the possibility of the occurrence of, or in taking of legal action regarding, potential discriminatory treatment concerning pay, compensation, bonuses, other compensation, or benefits. Nothing in this subsection shall be construed to require an employee to disclose such information about the employee herself

to any other employee or former employee of the employer or to any authorized representative of the other employee or former employee.

s. For an employer to treat, for employment-related purposes, a woman employee that the employer knows, or should know, is affected by pregnancy or breastfeeding in a manner less favorable than the treatment of other persons not affected by pregnancy or breastfeeding but similar in their ability or inability to work. In addition, an employer of an employee who is a woman affected by pregnancy shall make available to the employee reasonable accommodation in the workplace, such as bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work, for needs related to the pregnancy when the employee, based on the advice of her physician, requests the accommodation, and, in the case of a employee breast feeding her infant child, the accommodation shall include reasonable break time each day to the employee and a suitable room or other location with privacy, other than a toilet stall, in close proximity to the work area for the employee to express breast milk for the child, unless the employer can demonstrate that providing the accommodation would be an undue hardship on the business operations of the employer. The employer shall not in any way penalize the employee in terms, conditions or privileges of employment for requesting or using the accommodation. Workplace accommodation provided pursuant to this subsection and paid or unpaid leave provided to an employee affected by pregnancy or breastfeeding shall not be provided in a manner less favorable than accommodations or leave provided to other employees not affected by pregnancy or breastfeeding but similar in their ability or inability to work. This subsection shall not be construed as otherwise increasing or decreasing any employee's rights under law to paid or unpaid leave in connection with pregnancy or breastfeeding.

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

For the purposes of this subsection, in determining whether an accommodation would impose undue hardship on the operation of an employer's business, the factors to be considered include: the overall size of the employer's business with respect to the number of employees, number and type of facilities, and size of budget; the type of the employer's operations, including the composition and structure of the employer's workforce; the nature and cost of the accommodation needed, taking into consideration the availability of tax credits, tax deductions, and outside funding; and the extent to which the accommodation would involve waiver of an essential

requirement of a job as opposed to a tangential or non-business necessity requirement.
(cf: P.L.2017, c.263)

4. Section 2 of P.L.2008, c.71 (C.45:22A-46.2) is amended to read as follows:

2. a. Notwithstanding any law or governing document to the contrary, the purchaser or grantee by operation of law of a dwelling unit in an age-restricted community shall be required to certify, prior to the resale or transfer by operation of law of a dwelling unit within the community, that the dwelling unit will be occupied by a person of an age that ensures compliance with the "housing for older persons" exception from the federal "Fair Housing Amendments Act of 1988," Pub.L.100-430 (42 U.S.C. ss.3601 et seq.) for that community as set forth in section 100.301 of Title 24, Code of Federal Regulations. The certification shall be on such form as may be prescribed by the Commissioner of Community Affairs, but shall not exceed one page in length. A copy of the certification shall be provided to the purchaser for recording. For the purpose of P.L.2008, c.71 (C.45:22A-46.1 et al.), "resale" shall mean any sale of a dwelling unit within an age-restricted community, other than the initial sale of the unit made by the developer to a purchaser.

b. Notwithstanding any law or governing document to the contrary, a person shall not refuse to rent, lease, or sell a unit in an age-restricted community to another person on the basis of familial status or the age of a dependent child or other person who may reside in the unit if the dependent child or other person who may reside in the unit has a disability. A person having the right of ownership or possession of the unit in an age-restricted community shall make reasonable accommodations in rules, policies, practices, or services in order to afford the disabled person an equal opportunity to use and enjoy a dwelling unit in the age-restricted community.
(cf: P.L.2008, c.71, s.2)

5. Section 1 of P.L.2014, c.6 (C.45:22A-48.3) is amended to read as follows:

1. The Division on Civil Rights in the Department of Law and Public Safety, in consultation with the Department of Community Affairs, shall post information on its Internet website explaining disability accommodation rights under the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for owners and occupants of condominiums, cooperatives, and other common interest communities governed by a homeowners' association or similar entity. The Internet posting shall include, but not be limited to, the owners' and occupants' rights to reasonable modifications of individual units and common areas, and reasonable

accommodations in rules, policies, practices, or services in order to afford a disabled person an equal opportunity to use and enjoy a dwelling unit in the community, including but not limited to an age-restricted community, and shall explain the obligations of governing associations and boards in evaluating and approving requests for modifications of the premises and accommodations in rules, policies, practices, or services. The Internet posting shall also provide clear information on how to file a complaint alleging violations of the "Law Against Discrimination" and the potential remedies available.

The Department of Community Affairs shall post the same information on its Internet website.

(cf: P.L.2014, c.6, s.1)

6. This act shall take effect immediately.

STATEMENT

The federal “Fair Housing Act” and the State "Law Against Discrimination" prohibit discrimination against disabled individuals, among others, in the sale or rental of housing units. Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling unit. "Housing for older persons" is exempt from the “familial status” anti-discrimination provisions under both federal and State law. Housing for older persons can legally discriminate on the basis of age as long as at least 80 percent of the housing units are intended for occupancy by at least one person 55 years of age or older. However, federal and State law do not exempt these age-restricted communities from the provisions prohibiting discrimination against disabled persons. A homeowners association’s refusal to waive its age restriction for prospective purchasers that had a disabled son living with them was found to constitute unlawful discrimination in Canady v. Prescott Canyon Estates Homeowners Ass’n, 204 Ariz. 91 (Ariz. 2002).

This bill is necessary to clarify the law because some age-restricted communities have attempted to over-extend their exemption from anti-discrimination laws, with regard to familial status, by discriminating against people with disabilities. Some persons and community associations refuse to sell or rent dwelling units to individuals who are 55 years of age or older because a younger person will be residing in the unit with the person who is 55 years of age or older. Most troubling is the refusal to rent or sell units in age-restricted communities to older persons who care for disabled children. This bill will require communities to

accommodate families caring for disabled children or face the prospect of anti-discrimination lawsuits under the State “Law Against Discrimination."

The bill provides that it is unlawful discrimination under the "Law Against Discrimination," to refuse to sell or lease a unit in housing for older persons to a person who is 55 years of age or older based upon the age of a dependent child or other person who may reside in the unit, or upon familial status, if the dependent child or other person who may reside in the unit has a disability. The bill requires a person having the right control over a unit of housing in an age-restricted community to make reasonable accommodations in rules, policies, practices, or services in order to afford a disabled person an equal opportunity to use and enjoy a dwelling unit.

The bill provides that nothing in the "Law Against Discrimination" shall be construed as authorizing a person to discriminate against a person with a disability, or excusing a person from failing to make a reasonable accommodation in rules, policies, practices, or services in order to afford a disabled person an equal opportunity to use and enjoy a dwelling unit in housing for older persons.

The bill also provides that, notwithstanding any law or community association governing document to the contrary, no one may refuse to rent, lease, or sell a unit in an age-restricted community to another person on the basis of familial status or the age of a dependent child or other person who may reside in the unit if the dependent child or other person is disabled. The bill requires a person having control of a unit in an age-restricted community to make reasonable accommodations in their rules, policies, practices, or services to provide people with disabilities an equal opportunity to a dwelling unit in the age-restricted community.

The bill also requires the Attorney General and the Department of Community Affairs to post on the Internet information regarding disability accommodation rights for owners and occupants of common interest communities, specifically, that owners and occupants have the right to receive reasonable accommodations in community association rules and policies so disabled persons have an equal opportunity to use and enjoy dwelling units in age-restricted communities.