SENATE, No. 4302

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 4, 2022

Sponsored by:
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
Senator TROY SINGLETON
District 7 (Burlington)

Co-Sponsored by:
Senator Beach

SYNOPSIS

Establishes Department of Diversity, Equity, and Inclusion as principal department in Executive Branch and specifies functions, powers, and duties of department.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 1/6/2022)

AN ACT establishing the Department of Diversity, Equity, and Inclusion as a principal department in the Executive Branch and supplementing Title 52 of the Revised Statues and amending various parts of the statutory law.

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

1. (New section) This act, P.L. , c. (C.)(pending before the Legislature as this bill), shall be known and may be cited as the "Diversity, Equity, and Inclusion Act."

2. (New section) There is hereby established in the Executive Branch of the State Government a principal department which shall be known as the Department of Diversity, Equity, and Inclusion.

As used in this act, P.L. , c. (C.)(pending before the Legislature as this bill), unless the context clearly indicates otherwise, the word "department" means the Department of Diversity, Equity, and Inclusion established herein.

3. (New section) a. The administrator and chief executive officer of the department shall be known as the Commissioner of Diversity, Equity, and Inclusion, and shall be a person qualified by experience and training to perform the duties of the office. The commissioner shall be appointed by the Governor, with advice and consent of the Senate, and shall serve at the pleasure of the Governor during the Governor's term of office and until the appointment and qualification of a successor. The commissioner shall devote their entire time and attention to the duties of the office and shall not engage in any other profession or occupation. The commissioner shall receive a salary as shall be provided by law.

b. The commissioner shall delegate such powers as the commissioner deems appropriate for the efficient administration of the department, to be exercised under the commissioner's direction and supervision by one or more deputy commissioners. A deputy commissioner shall devote their entire time and attention to the duties of that office and shall receive such salary as the commissioner deems appropriate.

4. (New section) The commissioner, as administrator and chief executive officer of the department, shall:

a. Administer the work of the department;

b. Appoint and remove officers and other personnel employed within the department, subject to the provisions of Title 11A of the

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 <u>thus</u> is new matter.

Revised Statutes, Civil Service, and other applicable statutes, except as herein otherwise specifically provided;

c. Appoint such deputy and assistant officers, directors, and other personnel in the unclassified service as the commissioner shall deem appropriate, to receive such compensation as may be provided by law;

d. Perform, exercise, and discharge the functions, powers, and duties of the department through such divisions as may be established;

e. Organize the work of the department in such divisions, not inconsistent with the provisions of this act, P.L. , c. (C.)(pending before the Legislature as this bill), and in such other organizational units as the commissioner may determine to be necessary for efficient and effective operation;

f. Adopt, issue, and promulgate, in the name of the department, such rules and regulations as may be authorized by law, consistent with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq,);

g. Formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the department, its officers, and employees;

h. Institute or cause to be instituted such legal proceedings or processes as may be necessary to enforce and give effect to any of the commissioner's powers or duties;

i. Make such reports of the department's operation as the Governor or the Legislature shall from time to time request, or as may be required by law;

j. Coordinate the activities of the department, and the several divisions and other agencies therein, in a manner designed to eliminate overlapping and duplicating functions;

k. Integrate within the department, so far as practicable, all staff services of the department and of the several divisions and other agencies therein;

l. Maintain suitable headquarters for the department and such other quarters as are necessary to the proper functioning of the department;

m. Solicit, apply for, and accept on behalf of the State any contributions, donations of money, goods, services, real or personal property or grants from the federal government or any agency thereof, or from any foundation, corporation, association or individual, and comply with the terms, conditions, and limitations thereof, for any of the purposes of the department;

n. Enter into contracts and agreements with public and private entities, as may be appropriate to carry out the purposes of the department;

o. Be the request officer for the department within the meaning of such term as defined in P.L.1944, c.112 (C.52:27B-1 et seq.); and

p. Perform such other functions as may be prescribed in this act or by any other law.

5. (New section) The functions, powers, and duties of the department shall be those specified in this act, P.L. , c. (C.)(pending before the Legislature as this bill) and any other statute, and shall include, but not be limited to:

consulting and assisting on efforts by the Director of the Division of Investment in the Department of Treasury to attempt to use underrepresented financial businesses to provide brokerage and investment management services;

consulting and assisting on diversity, equity, and inclusion in investments by the State, and its political subdivisions, in the allocation of loans and grants for business formation, and in the provision of low interest loans and down payment support for homeowners; and

consulting and assisting on diversity, equity, and inclusion in procurement by the State and its political subdivisions.

6. (New section) Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of Diversity, Equity, and Inclusion may, with the approval of the Governor, adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of this act, P.L. , c. (C.)(pending before the Legislature as this bill), which regulations shall be effective for a period not to exceed six months and may, thereafter, be amended, adopted or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

7. (New section) a. The functions, powers, and duties of the State Office of Diversity and Inclusion in the Department of the Treasury, established pursuant to P.L. , c. (C.)(pending as Senate, No. 2525 of 2020), are continued and transferred to the Department of Diversity, Equity, and Inclusion, to be administered within that department as the commissioner so determines.

b. All responsibility for the budget, fiscal, and personnel matters of the State Office of Diversity and Inclusion is transferred to the Department of Diversity, Equity, and Inclusion.

c. Any reference in a law, order, rule, regulation, contract, document, judicial or administrative proceeding, or otherwise to the State Office of Diversity and Inclusion in the Department of the Treasury, after the effective date of this act, P.L. , c. (C.)(pending before the Legislature as this bill), shall mean the office in the Department of Diversity, Equity, and Inclusion.

d. All transfers directed by this act shall be made in accordance with the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

8. (New section) a. The functions, powers, and duties of the Small Business Registration and Minority and Women-Owned Business Enterprise Certification Services Unit in the Division of Revenue and Enterprise Services in the Department of the Treasury are continued and transferred to the Department of Diversity, Equity, and Inclusion, to be administered within that department as the commissioner so determines.

b. All responsibility for the budget, fiscal, and personnel matters of the Small Business Registration and Minority and Women-Owned Business Enterprise Certification Services Unit is transferred to the Department of Diversity, Equity and Inclusion.

c. Any reference in a law, order, rule, regulation, contract, document, judicial or administrative proceeding, or otherwise to the Small Business Registration and Minority and Women-Owned Business Enterprise Certification Services Unit in the Division of Revenue and Enterprise Services in the Department of the Treasury after the effective date of this act, P.L. , c. (C.)(pending before the Legislature as this bill), shall mean the unit in the Department of Diversity, Equity, and Inclusion.

d. All transfers directed by this act shall be made in accordance with the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

9. Section 1 of P.L.1995, c.129 (C.52:32-23.1) is amended to read as follows:

1. a. The **[**Department of Commerce and Economic Development**]** <u>Department of Diversity, Equity, and Inclusion</u> shall be responsible for the operation and continued development of the central registry, known as the Selective Assistance Vendor Information (SAVI II) database, which lists businesses certified as eligible to perform contracts under any State set-aside program. The purpose of the database shall be to enable contracting agencies and persons bidding on, or performing, State contracts to have ready access to the names of businesses which are eligible to perform set-aside contracts and to allow the department and contracting agencies to monitor participation by these businesses in State contracting.

b. The department shall randomly monitor businesses certified as eligible for any State set-aside program, or seeking such certification, to ensure compliance with eligibility requirements.

c. A person applying for the certification of a business as eligible for participation in any State set-aside program shall certify in writing that the person believes that the business meets all of the requirements for eligibility for the program. Any person who makes

a false statement in connection therewith shall be subject to the penalties provided by N.J.S.2C:28-2.
(cf: P.L.1995, c.129, s.1)

10. (New section) As used in this act, P.L. , c. (C.)(pending before the Legislature as this bill),:

"Accessibility" means the design, construction, development, and maintenance of facilities, information and communication technology, programs, and services so that all people, including people with disabilities, can fully and independently use them. The term "accessibility" shall include the provision of accommodations and modifications to ensure equal access to employment and participation in activities for people with disabilities, the reduction or elimination of physical and attitudinal barriers to equitable opportunities, and a commitment to ensuring that people with disabilities can independently access every outward-facing and internal activity or electronic space.

"Diversity" means the practice of including the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of residents of this State, including underserved communities.

"Equity" means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment.

"Inclusion" means the recognition, appreciation, and use of the talents and skills of employees of all backgrounds.

"State agency" means any principal department in the Executive Branch and any division, board, bureau, office, commission, or other instrumentality within or created by a principal department, and any independent State authority, commission, or instrumentality.

"Underserved communities" means a population that share a particular characteristic, as well as geographic communities, who have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. The term "underserved communities" shall include individuals who belong to communities of color, such as Black and African American, Hispanic and Latino, Native American, Alaska Native and Indigenous, Asian American, Native Hawaiian and Pacific Islander, Middle Eastern, and North African persons. The term "underserved communities" also includes individuals who belong to communities that face discrimination based on age, religion, disability, sex, affectional or sexual orientation, gender identity, pregnancy or pregnancy-related conditions. The term "underserved communities" shall also include first-generation professionals or first-generation college students; individuals with limited English proficiency; immigrants; the formerly incarcerated; persons who live in rural areas, veterans and

military spouses; and persons otherwise adversely affected by persistent poverty, discrimination, or inequality.

11. (New section) a. The Commissioner of Diversity, Equity, and Inclusion, in consultation with the State Treasurer, Commissioner of Labor and Workforce Development, and Chairperson and Chief Executive Officer of the Civil Service Commission shall:

(1) establish a coordinated Statewide initiative to promote diversity, equity, inclusion, and accessibility in the State government workforce;

(2) no later than 90 days following the effective date of this act, P.L. , c. (C.)(pending before the Legislature as this bill),:

(a) develop and issue a Statewide diversity, equity, inclusion, and accessibility strategic plan, which shall focus on workforce diversity, workplace inclusion, and State government accountability and leadership and shall highlight comprehensive strategies for the State government to identify and remove barriers to equal employment opportunity that may exist in the State government's recruitment, hiring, promotion, retention, professional development, and training policies and practices;

(b) review applicable orders, rules, and regulations related to the development or submission of State agency human capital and other State workforce plans and reports in connection with recruitment, hiring, promotion, retention, professional development, and training policies and practices, and develop a strategy for consolidating such State agency plans and reports where appropriate and permitted by law; and

(c) provide guidance to each State agency concerning formulation of State agency-specific diversity, equity, inclusion strategic plans prepared pursuant to subsection b. of this section;

(3) identify appropriate practices to improve the effectiveness of each State agency's efforts to recruit, hire, promote, retain, develop, and train a diverse and inclusive workforce, consistent with merit system principles and applicable law;

(4) establish a system for each State agency to report regularly on progress in implementing their State agency-specific diversity, equity, inclusion, and accessibility strategic plans;

(5) pursue opportunities to consolidate implementation efforts and reporting requirements related to advancing diversity, equity, inclusion, and accessibility established through related or overlapping statutes, executive orders, rules, and regulations; and

(6) support, coordinate, and encourage State agency efforts to conduct research, evaluation, and other evidence-building activities to identify leading practices, and other promising practices, for broadening participation and opportunities for advancement in State employment, and to assess and promote the benefits of diversity,

equity, inclusion, and accessibility for State performance and operations.

b. Each State agency shall develop and implement a diversity, equity, inclusion, and accessibility strategic plan. The State agency diversity, equity, inclusion, and accessibility strategic plan shall:

(1) define standards of success for diversity, equity, inclusion, and accessibility efforts based on leading policies and practices in the public and private sectors;

(2) consistent with merit system principles, identify strategies to advance diversity, equity, inclusion, and accessibility, and eliminate, where applicable, barriers to equity in State workforce functions, including, recruitment; hiring; background investigation; promotion; retention; performance evaluations and awards; professional development programs; mentoring programs or sponsorship initiatives; internship, fellowship, and apprenticeship programs; employee resource group and affinity group programs; temporary employee details and assignments; pay and compensation policies; health and retirements benefits, and employee services and work-life programs; disciplinary or adverse actions; reasonable accommodations for employees and applicants with disabilities; workplace policies to prevent gender-based violence; reasonable accommodations for employees who are members of religious minorities; and training, learning, and onboarding programs;

(3) include a comprehensive framework to address workplace harassment, including sexual harassment, and outline the policies and practices to prevent, report, respond to, and investigate harassment, including promoting mechanisms for employees to report misconduct and encouraging bystander intervention; and

(4) promote a data-driven approach to increase transparency on diversity, equity, inclusion, and accessibility within the State workforce.

12. (New section) a. The head of each State agency shall make advancing diversity, equity, inclusion, and accessibility a priority component of the State agency's strategic planning. The head of each State agency shall, no later than 45 days following the effective date of this act, P.L. , c. (C.)(pending before the Legislature as this bill), submit to the Commissioner of Diversity, Equity, and Inclusion a preliminary assessment of the state of diversity, equity, inclusion, and accessibility in the State agency's human resources practices and workforce composition. In conducting the preliminary assessment, the head of each State agency shall:

(1) assess whether State agency recruitment, hiring, promotion, retention, professional development, performance evaluations, pay and compensation policies, reasonable accommodations access, and training policies and practices are equitable;

(2) take an evidence-based and data-driven approach to determine whether and to what extent State agency practices result in

inequitable employment outcomes, and whether State agency actions may help to overcome systemic societal and organizational barriers;

(3) assess the status and effects of existing diversity, equity, inclusion, and accessibility initiatives or programs, and review the amount of institutional resources available to support human resource activities that advance the objectives; and

(4) identify areas where evidence is lacking and propose opportunities to build evidence to advance diversity, equity, inclusion, and accessibility and address those gaps identified.

b. The head of each State agency shall, no later than 45 days following the issuance of the Statewide diversity, equity, inclusion, and accessibility strategic plan, and annually thereafter, develop and submit to the Commissioner of Diversity, Equity, and Inclusion the diversity, equity, inclusion, and accessibility strategic plan for that State agency, which shall include State agency actions to advance diversity, equity, inclusion, and accessibility in the workforce and strategies to remove any potential barriers to diversity, equity, inclusion and shall include quarterly goals and actions to advance diversity, equity, inclusion, and accessibility initiatives in the agency workforce and in the State agency's workplace culture.

c. To foster diversity, equity, inclusion, and accessibility in the State government workforce, the head of each State agency shall:

(1) enhance diversity, equity, inclusion, and accessibility within the State agency, in collaboration with the agency's senior officials and consistent with applicable law and merit system principle,

(2) establish a position of diversity and inclusion officer that is distinct from an equal employment opportunity officer and that has sufficient seniority to coordinate efforts to promote diversity, equity, inclusion, and accessibility within the State agency; and

(3) strongly consider for employment, to the extent permitted by applicable law, qualified applicants of any background who have advanced diversity, equity, inclusion, and accessibility within the State agency.

13. (New section) a. The head of each State agency, in consultation with the Commissioner of Diversity, Equity, and Inclusion and Chief Technology Officer, shall take a data-driven approach to advancing policies that promote diversity, equity, inclusion, and accessibility within the State agency's workforce, while protecting the privacy of employees and safeguarding all personally identifiable information and protected health information.

b. The head of each State agency shall:

(1) measure demographic representation and trends related to diversity in the State agency's overall workforce composition, senior workforce composition, employment applications, hiring decisions, promotions, pay and compensation, and attrition rates;

(2) track demographic data relating to participation in leadership and professional development programs and development

opportunities offered or sponsored by the State agency and the rate of the placement of participating employees into senior positions in the State agency;

(3) review existing guidance, regulations, policies, and practices that govern State agency collection of demographic data on State employees, and consider issuing, modifying, or revoking such guidance in order to expand the collection of such voluntarily self-reported data and more effectively measure the representation of underserved communities in the State agency;

(4) in revisiting or issuing any such guidance, take steps to promote the protection of privacy and to safeguard personally identifiable information and reduce duplicative reporting requirements;

(5) take steps to ensure that data collection and analysis practices allow for the capture or presence of multiple attributes and identities;

(6) collect and analyze voluntarily self-reported demographic data regarding the membership of advisory committees, commissions, and boards in a manner consistent with applicable law, including privacy and confidentiality protections, and with statistical standards where applicable; and

(7) if applicable, pursue opportunities to increase diversity, equity, inclusion, and accessibility on committees, commissions, and boards to which the State agency appoint members.

14. (New section) a. The Commissioner of Diversity, Equity, and Inclusion, in consultation with the Chairperson and Chief Executive Officer of the Civil Service Commission, shall issue guidance to each State agency with respect to internships and similar programs within the State government. At a minimum, the guidance shall include information on:

(1) increasing the availability of paid internships, fellowships, and apprenticeships, and reduce the practice of hiring interns, fellows, and apprentices who are unpaid;

(2) ensuring that internships, fellowships, and apprenticeships serve as a supplement to, and not a substitute for, the competitive hiring process;

(3) ensuring that internships, fellowships, and apprenticeships serve to develop individuals' talent, knowledge, and skills for careers in government service;

(4) improving outreach to and recruitment of individuals from underserved communities for internship, fellowship, and apprenticeship programs; and

(5) ensuring all interns, fellows, and apprentices with disabilities, including applicants and candidates, have a process for requesting and obtaining reasonable accommodations to support their work in the State government.

b. The head of each State agency shall, as part of the annual strategic planning and reporting process, measure and report on the

State agency's progress with respect to the matters described in subsection a. of this section.

15. (New section) The Commissioner of Diversity, Equity, and Inclusion, in consultation with the Chairperson and Chief Executive Officer of the Civil Service Commission and the Secretary of Higher Education, shall coordinate a government wide initiative to strengthen partnerships to facilitate recruitment for State employment opportunities of individuals who are members of underserved communities. To carry out the partnerships initiative, the Commissioner of Diversity, Equity, and Inclusion shall take steps to increase diversity in the State employment pipeline by supporting and guiding agencies in building or strengthening partnerships with Historically Black Colleges and Universities, Hispanic-Serving Institutions; Tribal Colleges and Universities; Native American-serving, nontribal institutions; Asian American and Pacific Islander-serving institutions; Tribally controlled colleges and universities; Alaska Native-serving and Native Hawaiian-serving institutions; Predominantly Black Institutions; women's colleges and universities; State vocational rehabilitation agencies that serve individuals with disabilities; disability services offices at institutions of higher education; organizations dedicated to serving veterans; public and non-profit private universities serving a high percentage of economically disadvantaged students or first-generation college or graduate students; community colleges and technical schools; and community-based organizations that are dedicated to serving and working with underserved communities, including return-to-work programs, programs that provide training and support for older adults seeking employment, programs serving formerly incarcerated individuals, centers for independent living, disability rights organizations, and organizations dedicated to serving members of the lesbian, gay, bisexual, and transgender community.

16. (New section) a. The head of each State agency shall provide an equitable, accessible, and inclusive environment for employees with disabilities. In order for State employees and applicants with disabilities to be assessed on their merits, accessible information technologies shall be provided and, where needed, reasonable accommodations shall be available that allows qualified individuals with disabilities to perform the essential functions of their positions and access advancement opportunities.

b. The head of each State agency shall:

(1) provide individuals with disabilities equal employment opportunities and take affirmative actions within the State agency to ensure that the State agency fully comply with applicable federal and State laws,

(2) assess current practices to employ individuals with disabilities in the State agency, and evaluate opportunities to enhance equity in

employment opportunities and financial security for employees with disabilities through different practices or guidance; and

(3) ensure that applicants and employees with disabilities have access to information about and understand their rights regarding disability self-identification and requests for reasonable accommodations, workplace personal assistance services, and accessible information and communication technology; and

(4) ensure the process of responding to, or appealing a denial of, a reasonable accommodation requests is timely and efficient.

c. To ensure that all State office buildings and workplaces are accessible to employees with disabilities, the Commissioner of Diversity, Equity, and Inclusion and the State Treasurer, shall work with each State agency to ensure that State buildings and leased facilities comply with the accessibility standards of any federal or State law. The head of each State agency shall maximize the accessibility of the physical environment of the State agency's workplaces, consistent with applicable law and the availability of appropriations, so as to reduce the need for reasonable accommodations, and provide periodic notice to all State agency employees on the process to report any accessibility barriers in State buildings.

17. (New section) a. The Commissioner of Diversity, Equity, and Inclusion shall review State regulations and guidance, as appropriate and consistent with applicable law, to address any pay inequities and advance equal pay and work with each State agency to review, and revise, if necessary, job classification and compensation practices. Each State agency shall not seek or rely on an applicant's salary history during the hiring process to set pay or when setting pay for a current employee, unless salary history is raised without prompting by the applicant or employee.

b. The head of each State agency shall, as appropriate and consistent with applicable law, revise compensation practices in order to address any pay inequities and advance equal pay. The head of each State agency shall report to the Commissioner of Diversity, Equity, and Inclusion and the Chairperson and Chief Executive Officer of the Civil Service Commission any revisions to compensation practices made to implement this section.

18. (New section) To support equal opportunity for formerly incarcerated individuals who have served their terms of incarceration and to support their ability to fully reintegrate into society and make meaningful contributions to our State, the Commissioner of Diversity, Equity, and Inclusion, in consultation with the Chairperson and Chief Executive Officer of the Civil Service Commission and the Attorney General, shall evaluate the existence of any barriers that formerly incarcerated individuals face in accessing State employment opportunities and any effect of those barriers on the civil

service. As appropriate, the Commissioner of Diversity, Equity, and Inclusion shall also evaluate possible actions to expand State employment opportunities for formerly incarcerated individuals, including the establishment of a new office or hiring authority.

19. (New section) a. The head of each State agency shall take steps to implement or increase the availability and use of diversity, equity, inclusion, and accessibility training programs for employees, managers, and leadership. The training programs shall enable State agency employees, managers, and leaders to have knowledge of systemic and institutional racism and bias against underserved communities, be supported in building skillsets to promote respectful and inclusive workplaces and eliminate workplace harassment, have knowledge of State agency accessibility practices, and have increased understanding of implicit and unconscious bias.

b. The Commissioner of Diversity, Equity, and Inclusion shall issue guidance and serve as a resource and repository for best practices for a State agency to develop or enhance existing diversity, equity, inclusion, and accessibility training programs.

20. (New section) As used in sections 21 through 23 of P.L. , c. (C.)(pending before the Legislature as this bill):

"Development subsidy" means the provision of $100,000 or more by a New Jersey public body for the purpose of stimulating economic development in New Jersey, including, but not limited to, any grant, loan, loan guarantee, matching fund, or tax expenditure.

"Entity" means any corporation, association, partnership, limited liability partnership, or other legal entity, whether for-profit or non-profit.

"Financial assistance" means any grant, loan, or loan guarantee approved, authorized, administered, or provided by a New Jersey public body to an entity.

21. (New section) a. The Commissioner of Diversity, Equity, and Inclusion shall have the power and duty to oversee and enforce the following requirement.

As a condition of receiving any development subsidy or financial assistance, an entity shall develop, administer, and implement a strategic diversity, equity, and inclusion plan. The strategic diversity, equity, and inclusion plan shall describe the entity's overall vision, strategy, and key priorities with respect to diversity, equity, and inclusion and shall include a discussion of broader trends affecting the organization and influencing its diversity, equity, and inclusion priorities.

The plan shall be submitted to the department.

b. In addition to the elements required in subsection a. of this section, each entity's diversity, equity, and inclusion plan shall:

(1) describe the role of the entity's highest governing body in setting the entity's diversity, equity, and inclusion values and strategy, and evaluating the entity's performance in these areas;

(2) describe the entity's internal process for reviewing and assessing the entity's efforts to achieve its diversity, equity, and inclusion goals;

(3) establish specific and measurable goals to ensure diversity in recruitment for senior level positions and identifying diverse workforce talent;

(4) provide for the development and implementation of a training curriculum that provides for core competencies in diversity, equity, and inclusion;

(5) establish processes and procedures for the purpose of compiling information on the awarding of contracts to minority-owned and women-owned business enterprises, the total value of all contracts, and the percentage value of all contracts awarded to minority-owned and women-owned business enterprises;

(6) establish goals for participation of minority-owned and women-owned business enterprises based on best estimates of market availability without set-asides or quotas;

(7) establish uniform processes and procedures for compiling an annual report to the commissioner evaluating the entity's progress in attaining the goals set forth in the diversity, equity, and inclusion plan;

(8) implement and utilize a system that allows an entity to measure its progress towards achieving its diversity, equity, and inclusion goals, and alerts the entity when current patterns are not projected to reach those goals;

(9) establish a process for ensuring that procurement solicitation documents set forth minority-owned and women-owned business enterprise goals and require that the entity provide lists of known minority-owned and women-owned business enterprise subcontactors to parties seeking such information;

(10) establish protocols for the entity to conduct outreach efforts to minority-owned and women-owned business enterprises;

(11) ensure that fiduciary entities develop programs to provide financing or access to capital for minority-owned and women-owned business enterprises;

(12) measure the extent to which men and women employed by the entity work at different rates of pay and the extent to which job titles within that entity may be predominantly held by members of the same race or gender;

(13) measure the extent to which the entity's highest governing body reflects the racial and gender diversity of this State;

(14) measure the extent to which the entity procures goods and services from minority-owned and women-owned business enterprises and subcontractors, and provides opportunities for minority-owned and women-owned business enterprises and

subcontractors in the procurement of goods and services for the entity; and

(15) describe the entity's approach to stakeholder engagement, the basis for identifying stakeholders with whom to engage, and include a list of diversity, equity, and inclusion stakeholder groups engaged by the entity.

22. (New section) a. The commissioner shall, not later than 60 days after the effective date of this act, P.L. , c. (C.)(pending before the Legislature as this bill), provide written notification to every entity that receives a development subsidy or financial assistance, which written notification shall specify that the entity is required to submit to the department, within 120 days after receiving notification, a strategic diversity, equity, and inclusion plan.

b. The commissioner shall notify the State Treasurer if an entity fails to submit a strategic diversity, equity, and inclusion plan as required. Upon notification from the commissioner, the State Treasurer may, to the extent possible, withhold payments of any State-funded development subsidy or financial assistance to any entity until the entity submits a strategic diversity, equity, and inclusion plan to the department.

c. Following the initial filing of the strategic diversity, equity, and inclusion plan required pursuant to subsection a. of this section, each entity shall file with the department, on a form prepared by the commissioner, a progress report no later than 30 business days after the end of each State fiscal year, beginning with the end of the first full State fiscal year after receipt of the development subsidy or financial assistance, for the duration of the development subsidy or financial assistance, or for five years, whichever period is longer. The report shall include any information that the department deems necessary to assess the entity's performance towards achieving its diversity, equity, and inclusion goals for the reporting period.

23. (New section) a. The Division on Civil Rights in the Department of Law and Public Safety, together with its functions, powers and duties, is transferred to the Department of Diversity, Equity, and Inclusion as established pursuant to this act, P.L. , c. (C.)(pending before the Legislature as this bill).

b. All responsibility for the budget, fiscal, and personnel matters of the Division of Civil Rights is transferred to the Department of Diversity, Equity, and Inclusion.

c. Any reference in a law, order, rule, regulation, contract, document, judicial or administrative proceeding, or otherwise to the Division on Civil Rights in the Department of Law and Public Safety after the effective date of this act shall mean the Division on Civil Rights in the Department of Diversity, Equity, and Inclusion.

d. This transfer shall be made pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

24. 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.

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. <u>(1) “Commissioner” means the Commissioner of the Department of Diversity, Equity, and Inclusion established pursuant to P.L. c. (C.) (pending before the Legislature as this bill); and</u>

<u>(2)</u> "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.

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**]** commissioner 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**]** commissioner 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.

vv. "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture, hair types, and protective hairstyles.

ww. "Protective hairstyles" includes, but is not limited to, such hairstyles as braids, locks, and twists.

xx. "Family member" means a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, partner in a civil union couple, domestic partner, or any other individual related by blood to the person, and any other individual that the person shows to have a close association with the person which is the equivalent of a family relationship.

(cf: P.L.2019, c.436, s.2)

25. Section 6 of P.L.1945, c.169 (C.10:5-6) is amended to read as follows:

6. There is created in the Department of [Law and Public Safety] Diversity, Equity, and Inclusion as established pursuant to P.L. , (C.) (pending before the Legislature as this bill) a division known as "The Division on Civil Rights." The division is vested with the power to prevent and eliminate discrimination in the manner prohibited by [this act] P.L.1945, c.169 (C.10:5-1 et seq.) against persons because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender identity or expression, familial status, nationality, disability, or sex or because of their liability for service in the Armed Forces of the United States, by employers, labor organizations, employment agencies, or other persons and to take other actions against discrimination because of race, creed, color, national origin, ancestry, marital status, sex, familial status, nationality, disability, or age or because of their liability for service in the Armed Forces of the United States, as herein provided; and the division [created hereunder] established in this section is given general jurisdiction and authority for [such] these purposes.

(cf: P.L.2006, c.100, s.5)

26. Section 7 of P.L.1945, c.169 (C10:5-7) is amended to read as follows:

7. The [said division] Division on Civil Rights shall consist of the [Attorney General] Commissioner of the Department of Diversity, Equity, and Inclusion and the commission. The commission shall consist of [7] seven members; each member shall be appointed by the Governor, with the advice and consent of the Senate, for a term of [5] five years and until [his] the member's successor is appointed and qualified, except that of those first appointed, one shall be appointed for a term of [1] one year, one for a term of [2] two years, one for a term of [3] three years, and [2] two for a term of [4] four years. Vacancies caused other than by expiration of term shall be filled in the same manner but for the unexpired term only. Members of the commission shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties. The first [chairman] chairperson of the commission shall be designated by the Governor and thereafter, the [chairman] chairperson shall be elected by the members, annually.

(cf: P.L.1963, c.40, s.3)

27. Section 8 of P.L.1945, c.169 (C10:5-8) is amended to read as follows:

8. The [Attorney General] commissioner shall:

a. Exercise all powers of the division not vested in the commission.

b. Administer the work of the division.

c. Organize the division into sections[, which shall include] including, but not be limited to, a section which shall receive, investigate, and act upon complaints alleging discrimination against persons because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender identity or expression, familial status, disability, nationality or sex or because of their liability for service in the Armed Forces of the United States; and another which shall, in order to eliminate prejudice and to further good will among the various racial and religious and nationality groups in this State, study, recommend, prepare, and implement, in cooperation with [such] other departments of the State Government or any other agencies, groups, or entities both public and private, [such] educational and human relations programs as are consonant with the objectives of [this act] P.L.1945, c.169 (C.10:5-1 et seq.); and prescribe the organization of [said] these sections and the duties of [his] the commissioner's subordinates and assistants.

d. Appoint a Director of the Division on Civil Rights, who shall act for the [Attorney General] commissioner, in the [Attorney General's] commissioner's place and with the [Attorney General's] commissioner's powers, which appointment shall be subject to the approval of the commission and the Governor, a deputy director, and [such] assistant directors, field representatives, and assistants as may be necessary for the proper administration of the division and fix their compensation within the limits of available appropriations. The director, deputy director, assistant directors, field representatives, and assistants shall not be subject to the Civil Service Act and shall be removable by the [Attorney General] commissioner at will.

e. Appoint [such] any clerical force and employees as the [Attorney General] commissioner may deem necessary and fix their duties, all of whom shall be subject to the Civil Service Act.

f. Maintain liaison with local and State officials and agencies concerned with matters related to the work of the division.

g. Adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this act.

h. Conduct investigations, receive complaints and conduct hearings thereon other than those complaints received and hearings held pursuant to the provisions of [this act] P.L.1945, c.169 (C.10:5-1 et seq.).

i. In connection with any investigation or hearing held pursuant to the provisions of [this act] P.L.1945, c.169 (C.10:5-1 et seq.), subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person, under oath, and, in connection therewith, require the production for examination of any books or papers relating to any subject matter under investigation or in question by

the division and conduct [such] discovery procedures, which may include the taking of interrogatories and oral depositions as shall be deemed necessary by the [Attorney General] commissioner in any investigation. The [Attorney General] commissioner may make rules as to the issuance of subpoenas by the director. The failure of any witness when duly subpoenaed to attend, give testimony, or produce evidence shall be punishable by the Superior Court of New Jersey in the same manner as [such] that failure is punishable by [such] the court in a case therein pending.

j. Issue [such] publications and [such] results of investigations and research tending to promote good will and to minimize or eliminate discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender identity or expression, familial status, disability, nationality or sex, as the commission shall direct, subject to available appropriations.

k. Render each year to the Governor and Legislature a full written report of all the activities of the division.

l. Appoint, subject to the approval of the commission, a panel of not more than five hearing examiners, each of whom shall be duly licensed to practice law in this State for a period of at least five years, and each to serve for a term of one year and until his successor is appointed, any one of whom the director may designate in [his] the director's place to conduct any hearing and recommend findings of fact and conclusions of law. The hearing examiners shall receive [such] compensation as may be determined by the [Attorney General] commissioner, subject to available appropriations.

(cf: P.L.2006, c.100, s.6)

28. Section 9 of P.L.1945, c.169 (C.10:5-10) is amended to read as follows:

9. The commission shall:

a. Consult with and advise the [Attorney General] commissioner with respect to the work of the division.

b. Survey and study the operations of the division.

c. Report to the Governor and the Legislature with respect to [such] matters relating to the work of the division and at [such] times as it may deem in the public interest.

The mayors or chief executive officers of the municipalities in the State may appoint local commissions on civil rights to aid in effectuating the purposes of [this act] P.L.1945, c.169 (C.10:5-1 et seq.). [Such] These local commissions shall be composed of representative citizens serving without compensation. [Such] The commissions shall attempt to foster through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the inhabitants of the community, and they may be empowered by the local governing bodies to make recommendations

to them for the development of policies and procedures in general and for programs of formal and informal education that will aid in eliminating all types of discrimination based on race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender identity or expression, familial status, disability, nationality or sex.
(cf: P.L.2006, c.100, s.8)

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

10. ⟦No⟧ A person shall not be excused from attending and testifying or from producing records, correspondence, documents or other evidence in obedience to the subpoena of the ⟦Attorney General⟧ commissioner, director, or hearing examiner on the ground that the required testimony or evidence ⟦required of him⟧ may tend to incriminate ⟦him⟧ the person or subject ⟦him⟧ the person to a penalty or forfeiture, but ⟦no⟧ a person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which ⟦he⟧ the person is compelled, after having ⟦claimed his⟧ invoked the privilege against self-incrimination, to testify or produce evidence. ⟦But he may nevertheless⟧ A person may be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence in accordance with the subpoena, and any ⟦such⟧ testimony given or evidence produced shall be admissible against ⟦him⟧ the person in any proceeding concerning ⟦such⟧ perjury or contempt. The immunity ⟦herein⟧ provided in this section shall extend only to natural persons so compelled to testify.
(cf: P.L.1966, c.17, s.3)

30. 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.

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

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

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

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 sought legal advice regarding rights under

this act, shared relevant information with legal counsel, shared information with a governmental entity, or 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).

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, liability for service in the Armed Forces of the United States, 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, liability for service in the Armed Forces of the United States, 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, 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, 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, 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 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).

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).

j. For any person whose activities are included within the scope of **[**this act**]** P.L.1945, c.169 (C.10:5-1 et seq.) to refuse to post or display **[**such**]** notices concerning the rights or responsibilities of persons affected by **[**this act**]** P.L.1945, c.169 (C.10:5-1 et seq.) as the **[**Attorney General**]** commissioner 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 family members, 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 family members, 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, discussing with, or disclosing to, any other employee or former employee of the employer, a lawyer from whom the employee seeks legal advice, or any government agency information regarding the job title, occupational category, and rate of compensation, including benefits, of the employee or any other employee or former employee of the employer, or the gender, race, ethnicity, military status, or national origin of the employee or any other employee or former employee of the employer, regardless of whether the request was responded to, or to require, as a condition of employment, any employee or prospective employee to sign a waiver, or to otherwise require an employee or prospective employee to agree, not to make those requests or disclosures. 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.

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

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

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

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

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

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

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

(cf: P.L.2019, c.436, s.3)

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

12. a. (1) Any person claiming to be aggrieved by an unlawful employment practice or an unlawful discrimination may, personally or by an attorney-at-law, make, sign, and file with the division a

verified complaint in writing which shall state the name and address of the person, employer, labor organization, employment agency, owner, lessee, proprietor, manager, superintendent, or agent alleged to have committed the unlawful employment practice or unlawful discrimination complained of and which shall set forth the particulars thereof and shall contain such other information as may be required by the division. Upon receipt of the complaint, the division shall notify the complainant on a form promulgated by the director of the division and approved by the **[**Attorney General**]** commissioner of the complainant's rights under P.L.1945, c.169 (C.10:5-1 et seq.), including the right to file a complaint in the Superior Court to be heard before a jury; of the jurisdictional limitations of the division; and any other provisions of P.L.1945, c.169 (C.10:5-1 et seq.), without interpretation, that may apply to the complaint. The Commissioner of Labor and Workforce Development, the Attorney General, the commissioner, the director, or the Commissioner of Education may, in like manner, make, sign, and file **[**such**]** a complaint. Any employer whose employees, or some of them, refuse, or threaten to refuse to cooperate with the provisions of P.L.1945, c.169 (C.10:5-1 et seq.), may file with the division a verified complaint asking for assistance by conciliation or other remedial action.

(2) Any complainant, including any person claiming to be aggrieved by an unlawful employment practice or an unlawful discrimination, the Attorney General, the commissioner, the director, the Commissioner of Labor and Workforce Development, or the Commissioner of Education, may initiate suit in Superior Court under P.L.1945, c.169 (C.10:5-1 et seq.) without first filing a complaint with the division or any municipal office. In **[**such**]** these proceedings:

(a) Upon the application of any party, a jury trial shall be directed to try the validity of any claim under P.L.1945, c.169 (C.10:5-1 et seq.) specified in the suit.

(b) All remedies available in common law tort actions shall be available to prevailing plaintiffs, and if the **[**Attorney General**]** commissioner or the director is a prevailing plaintiff, those remedies shall be available on behalf of named or unnamed victims. If the suit seeks relief for one or more unnamed members of a protected class, the **[**Attorney General**]** commissioner or the director shall have the discretion to settle the suit on such terms as the **[**Attorney General**]** commissioner or the director deems appropriate. The injunctive relief set forth in section 16 of P.L.1945, c.169 (C.10:5-17) shall also be available to prevailing plaintiffs. These remedies are in addition to any other provided by P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute.

(c) In addition to the remedies set forth in subparagraph (b) of this paragraph, the **[**Attorney General**]** commissioner or director may

seek and obtain from the Superior Court penalties pursuant to section 2 of P.L.1983, c.412 (C.10:5-14.1a). In the alternative, in lieu of these penalties, the ⟦Attorney General⟧ commissioner or director may seek and obtain punitive damages payable to the State upon a finding that the provisions of P.L.1995, c.142 (C.2A:15-5.9 et al.) are satisfied.

Prosecution of such suit in Superior Court under P.L.1945, c.169 (C.10:5-1 et seq.) shall bar the filing of a complaint with the division or any municipal office during the pendency of any such suit.

(d) If a jury or court determines that an employer has committed an unlawful employment practice prohibited by subsection r. or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the judge shall award three times any monetary damages to the person or persons aggrieved by the violation.

(e) Notwithstanding the provisions of section 6 of P.L.1979, c.404 (C.10:5-27.1), if the ⟦Attorney General⟧ commissioner or the director is a prevailing plaintiff, the court shall award reasonable attorney's fees and litigation and investigation costs.

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

c. A party to an action based upon a violation of P.L.1945, c.169 (C.10:5-1 et seq.) shall mail a copy of the initial pleadings or claims, amended pleadings or claims, counterclaims, briefs, and legal memoranda to the division at the same time as filing such documents with the Office of Administrative Law or the court. Upon application to the Office of Administrative Law or to the court wherein the matter is pending, the division shall be permitted to intervene.

(cf: P.L.2019, c.436, s.5)

32. Section 13 of P.L.1945, c.169 (C.10:5-14) is amended to read as follows:

13. After the filing of any complaint, the ⟦Attorney General⟧ commissioner shall cause prompt investigation to be made in connection therewith and advise the complainant of the results thereof. During the period beginning with the filing of such complaint and ending with the closure of the case or 45 days from the date of a finding of probable cause, the ⟦Attorney General⟧ commissioner shall, to the extent feasible, engage in conciliation with respect to ⟦such⟧ the complaint. Neither the ⟦Attorney General⟧ commissioner nor any officer or employee of the division shall

disclose any conversation between the [Attorney General] commissioner or a representative and the respondent or a representative at [such] the conference, except that the [Attorney General] commissioner and any officer or employee may disclose the terms of a settlement offer to the complainant or other aggrieved person on whose behalf the complaint was filed.
(cf: P.L.2003, c.180, s.14)

33. Section 14 of P.L.1945, c.169 (C.10:5-15) is amended to read as follows:

14. In case of failure [so] to eliminate [such] an unlawful employment practice or discrimination, or in advance thereof if in [his] the commissioner's judgment circumstances so warrant, the [Attorney General] commissioner shall cause to be issued and served in the name of the division, a written notice, together with a copy of [such] the complaint, as the same may have been amended, requiring the person, employer, labor organization, employment agency, owner, lessee, proprietor, manager, superintendent, or agent named in [such] the complaint, hereinafter referred to as respondent, to answer the charges of [such] the complaint at a hearing before the director at a time and place to be specified in [such] the notice. The place of any such hearing shall be the office of the [Attorney General] commissioner or [such] other place as may be designated by [him] the commissioner.
(cf: P.L.1963, c.40, s.9)

34. Section 16 of P.L.1945, c.169 (C.10:5-17) is amended to read as follows:

16. If, upon all evidence at the hearing, the director shall find that the respondent has engaged in any unlawful employment practice or unlawful discrimination as defined in P.L.1945, c.169 (C.10:5-1 et seq.), the director shall state [his] findings of fact and conclusions of law and shall issue and cause to be served on [such] the respondent an order requiring [such] the respondent to cease and desist from [such] the unlawful employment practice or unlawful discrimination and to take [such] affirmative action[,] including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership, in any respondent labor organization, or extending full and equal accommodations, advantages, facilities, and privileges to all persons, as, in the judgment of the director, will effectuate the purpose of P.L.1945, c.169 (C.10:5-1 et seq.), and including a requirement for report of the manner of compliance. If the conduct violative of P.L.1945, c.169 (C.10:5-1 et seq.) constitutes any form of unlawful economic discrimination prohibited in subsection 1., m., or n. of section 11 of P.L.1945, c.169 (C.10:5-12), or any form of unlawful

employment practice prohibited by subsection r. or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the affirmative action taken by the director may include the award of three-fold damages to the person or persons aggrieved by the violation. The director shall have the power to use reasonably certain bases, including but not limited to list, catalogue or market prices or values, or contract or advertised terms and conditions, in order to determine particulars or performance in giving appropriate remedy. In addition to any other remedies provided by P.L.1945, c.169 (C.10:5-1 et seq.), a prevailing complainant may recover damages to compensate for emotional distress caused by the activities found to be in violation of P.L.1945, c.169 (C.10:5-1 et seq.) to the same extent as is available in common law tort actions. In any case in which the director, **[**Attorney General**]** commissioner, or appropriate organization is a complainant, on behalf of named or unnamed individuals or a class of individuals, any of the remedies or relief allowed by P.L.1945, c.169 (C.10:5-1 et seq.) may be awarded or applied to the named or unnamed individual victims of discrimination. If, upon all evidence, the director shall find that the respondent has not engaged in any such unlawful practice or unlawful discrimination, the director shall state **[**his**]** findings of fact and conclusions of law and shall issue and cause to be served on the complainant an order dismissing the **[**said**]** complaint as to **[**such**]** the respondent.

This section shall not apply to a violation regarding an inquiry as to an applicant's salary history pursuant to section 2 of P.L.2019, c.199 (C.10:4-12.12).

(cf: P.L.2019, c.199, s.4)

35. Section 17 of P.L.1945, c.169 (C.10:5-18) is amended to read as follows:

17. The **[**Attorney General**]** commissioner shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure and **[**his**]** the commissioner's own actions thereunder. Any complaint filed in the division or in any municipal office pursuant to **[**this act must**]** P.L.1945, c.169 (C.10:5-1 et seq.) shall be **[**so**]** filed within 180 days after the alleged act of discrimination.

(cf: P.L.1979, c.404, s.4)

36. Section 25 of P.L.1945, c.169 (C.10:5-26) is amended to read as follows:

25. Any person who shall willfully resist, prevent, impede, or interfere with the **[**Attorney General**]** commissioner or any representative of the division in the performance of duty under **[**this act**]** P.L.1945, c.169 (C.10:5-1 et seq.), or shall willfully violate an order of the **[**Attorney General**]** commissioner, or the director, shall be guilty of a misdemeanor and shall be punishable by imprisonment for not more than one year, or by a fine of not more than $500.00, or

by both; but procedure for the review of the order shall not be deemed to be [such] willful conduct.
(cf: P.L.1963, c.40, s.17)

37. This act shall take effect on the first day of the seventh month following enactment, except that such anticipatory actions may be taken in advance of the effective date as deemed necessary and appropriate to implement this act.

STATEMENT

This bill establishes the Department of Diversity, Equity, and Inclusion (DDEI) as a new principal department within the Executive Branch. The bill specifies the commissioner of Diversity, Equity, and Inclusion is appointed by the Governor with advice and consent of the Senate, and serves at the pleasure of the Governor during the Governor's term of office. The commissioner serves as the administrator and chief executive officer of the DDEI.

The functions, powers, and duties of the commissioner are set forth in this bill and will include consulting and assisting on efforts by the Director of the Division of Investment in the Department of Treasury to attempt to use underrepresented financial businesses to provide brokerage and investment management services;

consulting and assisting on diversity, equity, and inclusion in investments by the State, and its political subdivisions, in the allocation of loans and grants for business formation, and in the provision of low interest loans and down payment support for homeowners; and

consulting and assisting on diversity, equity, and inclusion in procurement by the State and its political subdivisions.

The bill transfers certain State offices, units, and responsibilities to the DDEI. The functions, powers, and duties of the Office of Diversity and Inclusion and the Small Business Registration and Minority and Women-Owned Business Enterprise Certification Services Unit in the Department of the Treasury would be transferred to the DDEI. Additionally, the DDEI would be responsible for the operation and continued development of the central registry, known as the Selective Assistance Vendor Information (SAVI II) database, which lists businesses certified as eligible to perform contracts under any State set-aside program.

The bill requires Statewide and State agency-specific strategic plans for diversity, equity, inclusion, and accessibility in State government workforce. Under the bill, the Commissioner of Diversity, Equity, and Inclusion, in consultation with the State Treasurer, Commissioner of Labor and Workforce Development, and Chairperson and Chief Executive Officer of the Civil Service Commission must establish a coordinated Statewide initiative to

promote diversity, equity, inclusion, and accessibility in the State government workforce. Under the bill, the head of each State agency must, no later than 45 days following the issuance of the Statewide diversity, equity, inclusion, and accessibility strategic plan, and annually thereafter, develop and submit to Commissioner of Diversity, Equity, and Inclusion the diversity, equity, inclusion, and accessibility strategic plan.

The bill also requires the Commissioner of Diversity, Equity, and Inclusion to issue guidance on and State agencies to address:

(1) paid internships, fellowships, and apprenticeships;

(2) strengthening partnerships and recruitment with diverse communities and institutions;

(3) pay equity

(4) data collection

(5) ensuring accessibility for State employees with disabilities;

(6) evaluating the existence of any barriers that formerly incarcerated individuals face in accessing State employment opportunities; and

(7) the availability and use of diversity training programs.

This bill establishes a requirement, to be overseen and enforced by the new department, that any entity which receives a development subsidy or financial assistance from the State submit and implement a strategic diversity, equity, and inclusion plan to the Department of Diversity, Equity, and Inclusion. The plan is intended to assist corporations and not-for-profit entities in better understanding the State's demographics, while affording minority-owned and women-owned businesses more opportunities to participate in the procurement of goods and services to the public and private sector. The bill specifies what information an entity is required to include in the strategic diversity, equity, and inclusion plan. Each recipient of a development subsidy or financial assistance is required, for the duration of the subsidy or five years, whichever is longer, to submit annual reports on the progress of the recipient towards achieving its diversity, equity, and inclusion goals for the reporting period.

This bill also transfers the Division on Civil Rights to the Department of Diversity, Equity, and Inclusion. The division currently is in the Department of Law and Public Safety and is under the direction of the Attorney General, in conjunction with a commission consisting of seven public members appointed by the Governor. Under the bill, the commissioner of the department assumes the responsibilities of the Attorney General. The public member commission continues in its current capacity.