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Matt Arco - For Hunterdon County Democrat, 'Older workers get new shield from age bias', Hunterdon County Democrat (online), 7 Oct 2021 004

'NJ law scraps ability not to hire, promote workers over 70', Associated Press State Wire: New Jersey (online), 5 Oct 2021

RH/CL

CHAPTER 248
(CORRECTED COPY)

AN ACT concerning age discrimination and revising various parts of the statutory law.

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

1. Section 1 of P.L.1938, c.295 (C.10:3-1) is amended to read as follows:

C.10:3-1 Age discrimination prohibited; exceptions.

1. In the selection of persons for employment in the service of the State, or of any county or municipality thereof, no appointing officer shall discriminate against any such applicant because such applicant has attained the age of at least 40 years, at the time of said application for employment. Any provisions of law, executive order, rule or regulation to the contrary notwithstanding, no person other than a justice of the Supreme Court or a judge of the Superior Court pursuant to Article VI, Section VI, paragraph 3 of the Constitution of the State of New Jersey, or a judge of the Tax Court, or a judge of the Office of Administrative Law or a judge of the Division of Workers' Compensation, or a member of the Division of State Police, employed in the service of the State, or of any county or municipality thereof, or a member of a police or fire department employed in the service of the State or of any county or municipality thereof, shall be required to retire upon the attainment of a particular age unless the public employer can show that the person in the service of the State, or of any county or municipality thereof, is unable to adequately perform the person's duties. A contract of tenure or similar arrangement providing for tenure shall not bar a public employer from showing that the person in the service of the State, or of any county or municipality thereof, is unable to adequately perform the person's duties. A person in the employ of the State, or of any county or municipality thereof, who is required to retire upon the attainment of a particular age in violation of this section shall be entitled to reinstatement with back pay and interest.

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

C.10:5-12 Unlawful employment practices, discrimination.

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 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 thereof 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 to refuse to post or display such notices concerning the rights or responsibilities of persons affected by this act as the Attorney General may by regulation require.

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

l. For any person to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of the race, creed, color, national origin, ancestry, age, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, marital status, civil union status, domestic partnership status, liability for service in the Armed Forces of the United States, disability, nationality, or source of lawful income used for rental or mortgage payments of such other person or of such other person's 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.

3. Section 5 of P.L.1985, c.73 (C.10:5-12.1) is amended to read as follows:

C.10:5-12.1 Reinstatement, back pay.

5. As an alternative to or in addition to any other sanction provided by any other applicable law, relief for having been required to retire in violation of the provisions of section 11 of P.L.1945, c.169 (C.10:5-12), shall be available to the person aggrieved by that violation through the procedure initiated by filing a complaint with the Attorney General under the provisions of P.L.1945, c.169 (C.10:5-1 et seq.).

As an alternative to or in addition to any other sanction provided by section 16 of P.L.1945, c.169 (C.10:5-17) or any other applicable law, relief ordered for or granted to a person in connection with the person being required to retire in violation of the provisions of section 11 of P.L.1945, c.169 (C.10:5-12) shall include reinstatement with back pay and interest.

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.10:5-12.12).

Repealer.

4. Section 4 of P.L.1985, c.73 (C.10:5-2.2) is repealed.

5. This act shall take effect immediately.

Approved October 5, 2021.

P.L. 2021, CHAPTER 248, *approved October 5, 2021*
Assembly, No. 681

1 AN ACT concerning age discrimination and revising various parts of
2 the statutory law.

3

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

6

7 1. Section 1 of P.L.1938, c.295 (C.10:3-1) is amended to read
8 as follows:

9 1. In the selection of persons for employment in the service of
10 the State, or of any county or municipality thereof, no appointing
11 officer shall discriminate against any such applicant because such
12 applicant has attained the age of at least 40 years, at the time of said
13 application for employment. Any provisions of law, executive
14 order, rule or regulation to the contrary notwithstanding, no person
15 other than a justice of the Supreme Court or a judge of the Superior
16 Court pursuant to Article VI, Section VI, paragraph 3 of the
17 Constitution of the State of New Jersey, or a judge of the Tax
18 Court, or a judge of the Office of Administrative Law or a judge of
19 the Division of Workers' Compensation, or a member of the
20 Division of State Police, employed in the service of the State, or of
21 any county or municipality thereof, or a member of a police or fire
22 department employed in the service of the State or of any county or
23 municipality thereof, shall be required to retire upon the attainment
24 of a particular age unless the public employer can show that **the**
25 retirement age bears a manifest relationship to the employment in
26 question or that **the** person in the service of the State, or of any
27 county or municipality thereof, is unable to adequately perform the
28 person's duties. A contract of tenure or similar arrangement
29 providing for tenure shall not bar a public employer from showing
30 that **a** retirement age bears a manifest relationship to the
31 employment in question or that **the** person in the service of the
32 State, or of any county or municipality thereof, is unable to
33 adequately perform the person's duties. A person in the employ of
34 the State, or of any county or municipality thereof, who is required
35 to retire upon the attainment of a particular age in violation of this
36 section shall be entitled to reinstatement with back pay and interest.
37 (cf: P.L.1999, c.380, s.15)

38

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

EXPLANATION – Matter enclosed in bold-faced brackets **thus** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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

3 a. For an employer, because of the race, creed, color, national
4 origin, ancestry, age, marital status, civil union status, domestic
5 partnership status, affectional or sexual orientation, genetic
6 information, pregnancy or breastfeeding, sex, gender identity or
7 expression, disability or atypical hereditary cellular or blood trait of
8 any individual, or because of the liability for service in the Armed
9 Forces of the United States or the nationality of any individual, or
10 because of the refusal to submit to a genetic test or make available
11 the results of a genetic test to an employer, to refuse to hire or
12 employ or to bar or to discharge or require to retire, unless justified
13 by lawful considerations other than age, from employment such
14 individual or to discriminate against such individual in
15 compensation or in terms, conditions or privileges of employment;
16 provided, however, it shall not be an unlawful employment practice
17 to refuse to accept for employment an applicant who has received a
18 notice of induction or orders to report for active duty in the armed
19 forces; provided further that nothing herein contained shall be
20 construed to bar an employer from refusing to accept for
21 employment any person on the basis of sex in those certain
22 circumstances where sex is a bona fide occupational qualification,
23 reasonably necessary to the normal operation of the particular
24 business or enterprise; [provided further that nothing herein
25 contained shall be construed to bar an employer from refusing to
26 accept for employment or to promote any person over 70 years of
27 age;] provided further that it shall not be an unlawful employment
28 practice for a club exclusively social or fraternal to use club
29 membership as a uniform qualification for employment, or for a
30 religious association or organization to utilize religious affiliation
31 as a uniform qualification in the employment of clergy, religious
32 teachers or other employees engaged in the religious activities of
33 the association or organization, or in following the tenets of its
34 religion in establishing and utilizing criteria for employment of an
35 employee; provided further, that it shall not be an unlawful
36 employment practice to require the retirement of any employee
37 who, for the two-year period immediately before retirement, is
38 employed in a bona fide executive or a high policy-making position,
39 if that employee is entitled to an immediate non-forfeitable annual
40 retirement benefit from a pension, profit sharing, savings or
41 deferred retirement plan, or any combination of those plans, of the
42 employer of that employee which equals in the aggregate at least
43 \$27,000.00; and provided further that an employer may restrict
44 employment to citizens of the United States where such restriction
45 is required by federal law or is otherwise necessary to protect the
46 national interest.

47 The provisions of subsections a. and b. of section 57 of
48 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of

1 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
2 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

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

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

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

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

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

1 normal operation of the particular apprentice or other training
2 program.

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

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

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

29 f. (1) For any owner, lessee, proprietor, manager,
30 superintendent, agent, or employee of any place of public
31 accommodation directly or indirectly to refuse, withhold from or
32 deny to any person any of the accommodations, advantages,
33 facilities or privileges thereof, or to discriminate against any person
34 in the furnishing thereof, or directly or indirectly to publish,
35 circulate, issue, display, post or mail any written or printed
36 communication, notice, or advertisement to the effect that any of
37 the accommodations, advantages, facilities, or privileges of any
38 such place will be refused, withheld from, or denied to any person
39 on account of the race, creed, color, national origin, ancestry,
40 marital status, civil union status, domestic partnership status,
41 pregnancy or breastfeeding, sex, gender identity or expression,
42 affectional or sexual orientation, disability, liability for service in
43 the Armed Forces of the United States or nationality of such person,
44 or that the patronage or custom thereat of any person of any
45 particular race, creed, color, national origin, ancestry, marital status,
46 civil union status, domestic partnership status, pregnancy or
47 breastfeeding status, sex, gender identity or expression, affectional
48 or sexual orientation, disability, liability for service in the Armed

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

22 (2) Notwithstanding the definition of "a place of public
23 accommodation" as set forth in subsection 1. of section 5 of
24 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
25 manager, superintendent, agent, or employee of any private club or
26 association to directly or indirectly refuse, withhold from or deny to
27 any individual who has been accepted as a club member and has
28 contracted for or is otherwise entitled to full club membership any
29 of the accommodations, advantages, facilities or privileges thereof,
30 or to discriminate against any member in the furnishing thereof on
31 account of the race, creed, color, national origin, ancestry, marital
32 status, civil union status, domestic partnership status, pregnancy or
33 breastfeeding, sex, gender identity, or expression, affectional or
34 sexual orientation, disability, liability for service in the Armed
35 Forces of the United States or nationality of such person.

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

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

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

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

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

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

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

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

46 (3) To print, publish, circulate, issue, display, post, or mail, or
47 cause to be printed, published, circulated, issued, displayed, posted
48 or mailed any statement, advertisement, publication or sign, or to

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

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

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

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

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

1 breastfeeding, sex, gender identity or expression, affectional or
2 sexual orientation, disability, liability for service in the Armed
3 Forces of the United States, familial status or nationality, in the
4 granting, withholding, extending, modifying, renewing, or
5 purchasing, or in the fixing of the rates, terms, conditions or
6 provisions of any such loan, extension of credit or financial
7 assistance or purchase thereof or in the extension of services in
8 connection therewith;

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

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

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

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

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

37 k. For any real estate broker, real estate salesperson or
38 employee or agent thereof or any other individual, corporation,
39 partnership, or organization, for the purpose of inducing a
40 transaction for the sale or rental of real property from which
41 transaction such person or any of its members may benefit
42 financially, to represent that a change has occurred or will or may
43 occur in the composition with respect to race, creed, color, national
44 origin, ancestry, marital status, civil union status, domestic
45 partnership status, familial status, pregnancy or breastfeeding, sex,
46 gender identity or expression, affectional or sexual orientation,
47 disability, liability for service in the Armed Forces of the United
48 States, nationality, or source of lawful income used for rental or

1 mortgage payments of the owners or occupants in the block,
2 neighborhood or area in which the real property is located, and to
3 represent, directly or indirectly, that this change will or may result
4 in undesirable consequences in the block, neighborhood or area in
5 which the real property is located, including, but not limited to the
6 lowering of property values, an increase in criminal or anti-social
7 behavior, or a decline in the quality of schools or other facilities.

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

25 m. For any person to:

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

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

45 The provisions of this subsection shall not apply to any letter of
46 credit, contract, or other document which contains any provision
47 pertaining to employee-employer collective bargaining, a labor
48 dispute or an unfair labor practice, or made in connection with the

1 protest of unlawful discrimination or an unlawful employment
2 practice, if the other provisions of such letter of credit, contract, or
3 other document do not otherwise violate the provisions of this
4 subsection.

5 n. For any person to aid, abet, incite, compel, coerce, or induce
6 the doing of any act forbidden by subsections l. and m. of section
7 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
8 do so. Such prohibited conduct shall include, but not be limited to:

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

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

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

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

40 q. (1) For any employer to impose upon a person as a
41 condition of obtaining or retaining employment, including
42 opportunities for promotion, advancement or transfers, any terms or
43 conditions that would require a person to violate or forego a
44 sincerely held religious practice or religious observance, including
45 but not limited to the observance of any particular day or days or
46 any portion thereof as a Sabbath or other holy day in accordance
47 with the requirements of the religion or religious belief, unless,
48 after engaging in a bona fide effort, the employer demonstrates that

1 it is unable to reasonably accommodate the employee's religious
2 observance or practice without undue hardship on the conduct of the
3 employer's business. Notwithstanding any other provision of law to
4 the contrary, an employee shall not be entitled to premium wages or
5 premium benefits for work performed during hours to which those
6 premium wages or premium benefits would ordinarily be
7 applicable, if the employee is working during those hours only as an
8 accommodation to his religious requirements. Nothing in this
9 subsection q. shall be construed as reducing:

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

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

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

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

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

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

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

46 (iii) For an employer with multiple facilities, the degree to
47 which the geographic separateness or administrative or fiscal

1 relationship of the facilities will make the accommodation more
2 difficult or expensive.

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

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

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

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

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

1 suitable room or other location with privacy, other than a toilet stall,
2 in close proximity to the work area for the employee to express
3 breast milk for the child, unless the employer can demonstrate that
4 providing the accommodation would be an undue hardship on the
5 business operations of the employer. The employer shall not in any
6 way penalize the employee in terms, conditions or privileges of
7 employment for requesting or using the accommodation. Workplace
8 accommodation provided pursuant to this subsection and paid or
9 unpaid leave provided to an employee affected by pregnancy or
10 breastfeeding shall not be provided in a manner less favorable than
11 accommodations or leave provided to other employees not affected
12 by pregnancy or breastfeeding but similar in their ability or inability
13 to work. This subsection shall not be construed as otherwise
14 increasing or decreasing any employee's rights under law to paid or
15 unpaid leave in connection with pregnancy or breastfeeding.

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

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

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

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

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

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

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

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

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

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

26
27 3. Section 5 of P.L.1985, c.73 (C.10:5-12.1) is amended to read
28 as follows:

29 5. **【Notwithstanding any provision of law to the contrary】**As an
30 alternative to or in addition to any other sanction provided by
31 any other applicable law, relief for having been required to retire in
32 violation of the provisions of section 11 of P.L.1945, c. 169
33 (C.10:5-12), shall be available to the person aggrieved by that
34 violation **【solely】** through the procedure initiated by filing a
35 complaint with the Attorney General under the provisions of
36 P.L.1945, c. 169 (C.10:5-1 et seq.).

37 **【Notwithstanding any provision to the contrary of】**As an
38 alternative to or in addition to any other sanction provided by
39 section 16 of P.L.1945, c. 169 (C.10:5-17) or any other applicable
40 law, relief ordered for or granted to a person in connection with the
41 person being required to retire in violation of the provisions of
42 section 11 of P.L.1945, c. 169 (C.10:5-12) shall **【be limited to the**
43 **person's】** include reinstatement with back pay and interest.

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

47 (cf: P.L.2019, c.199, s.3)

1 4. Section 4 of P.L.1985, c.73 (C.10:5-2.2) is repealed.

2

3 5. This act shall take effect immediately.

4

5

6

7

8 Expands scope of law prohibiting age discrimination.

ASSEMBLY, No. 681

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Assemblywoman BETTYLOU DECROCE

District 26 (Essex, Morris and Passaic)

Co-Sponsored by:

Assemblywoman Lampitt, Assemblyman Holley, Assemblywomen Sumter, Tucker, Assemblymen Johnson, Taliaferro, Assemblywoman Downey, Assemblyman Houghtaling, Assemblywomen Reynolds-Jackson, Murphy, Speight, Gove and Assemblyman Spearman

SYNOPSIS

Expands scope of law prohibiting age discrimination.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 9/17/2020)

A681 VAINIERI HUTTLE, MCKNIGHT

2

1 AN ACT concerning age discrimination and revising various parts of
2 the statutory law.

3

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

6

7 1. Section 1 of P.L.1938, c.295 (C.10:3-1) is amended to read
8 as follows:

9 1. In the selection of persons for employment in the service of
10 the State, or of any county or municipality thereof, no appointing
11 officer shall discriminate against any such applicant because such
12 applicant has attained the age of at least 40 years, at the time of said
13 application for employment. Any provisions of law, executive
14 order, rule or regulation to the contrary notwithstanding, no person
15 other than a justice of the Supreme Court or a judge of the Superior
16 Court pursuant to Article VI, Section VI, paragraph 3 of the
17 Constitution of the State of New Jersey, or a judge of the Tax
18 Court, or a judge of the Office of Administrative Law or a judge of
19 the Division of Workers' Compensation, or a member of the
20 Division of State Police, employed in the service of the State, or of
21 any county or municipality thereof, or a member of a police or fire
22 department employed in the service of the State or of any county or
23 municipality thereof, shall be required to retire upon the attainment
24 of a particular age unless the public employer can show that **the**
25 retirement age bears a manifest relationship to the employment in
26 question or that **the** person in the service of the State, or of any
27 county or municipality thereof, is unable to adequately perform the
28 person's duties. A contract of tenure or similar arrangement
29 providing for tenure shall not bar a public employer from showing
30 that **a** retirement age bears a manifest relationship to the
31 employment in question or that **the** person in the service of the
32 State, or of any county or municipality thereof, is unable to
33 adequately perform the person's duties. A person in the employ of
34 the State, or of any county or municipality thereof, who is required
35 to retire upon the attainment of a particular age in violation of this
36 section shall be entitled to reinstatement with back pay and interest.
37 (cf: P.L.1999, c.380, s.15)

38

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **thus in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 information, pregnancy or breastfeeding, sex, gender identity or
2 expression, disability or atypical hereditary cellular or blood trait of
3 any individual, or because of the liability for service in the Armed
4 Forces of the United States or the nationality of any individual, or
5 because of the refusal to submit to a genetic test or make available
6 the results of a genetic test to an employer, to refuse to hire or
7 employ or to bar or to discharge or require to retire, unless justified
8 by lawful considerations other than age, from employment such
9 individual or to discriminate against such individual in
10 compensation or in terms, conditions or privileges of employment;
11 provided, however, it shall not be an unlawful employment practice
12 to refuse to accept for employment an applicant who has received a
13 notice of induction or orders to report for active duty in the armed
14 forces; provided further that nothing herein contained shall be
15 construed to bar an employer from refusing to accept for
16 employment any person on the basis of sex in those certain
17 circumstances where sex is a bona fide occupational qualification,
18 reasonably necessary to the normal operation of the particular
19 business or enterprise; [provided further that nothing herein
20 contained shall be construed to bar an employer from refusing to
21 accept for employment or to promote any person over 70 years of
22 age;] provided further that it shall not be an unlawful employment
23 practice for a club exclusively social or fraternal to use club
24 membership as a uniform qualification for employment, or for a
25 religious association or organization to utilize religious affiliation
26 as a uniform qualification in the employment of clergy, religious
27 teachers or other employees engaged in the religious activities of
28 the association or organization, or in following the tenets of its
29 religion in establishing and utilizing criteria for employment of an
30 employee; provided further, that it shall not be an unlawful
31 employment practice to require the retirement of any employee
32 who, for the two-year period immediately before retirement, is
33 employed in a bona fide executive or a high policy-making position,
34 if that employee is entitled to an immediate non-forfeitable annual
35 retirement benefit from a pension, profit sharing, savings or
36 deferred retirement plan, or any combination of those plans, of the
37 employer of that employee which equals in the aggregate at least
38 \$27,000.00; and provided further that an employer may restrict
39 employment to citizens of the United States where such restriction
40 is required by federal law or is otherwise necessary to protect the
41 national interest.

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

46 For the purposes of this subsection, a "bona fide executive" is a
47 top level employee who exercises substantial executive authority
48 over a significant number of employees and a large volume of

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

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

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

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

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

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

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

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

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

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

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

17 (2) Notwithstanding the definition of "a place of public
18 accommodation" as set forth in subsection 1. of section 5 of
19 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
20 manager, superintendent, agent, or employee of any private club or
21 association to directly or indirectly refuse, withhold from or deny to
22 any individual who has been accepted as a club member and has
23 contracted for or is otherwise entitled to full club membership any
24 of the accommodations, advantages, facilities or privileges thereof,
25 or to discriminate against any member in the furnishing thereof on
26 account of the race, creed, color, national origin, ancestry, marital
27 status, civil union status, domestic partnership status, pregnancy or
28 breastfeeding, sex, gender identity, or expression, affectional or
29 sexual orientation, disability, liability for service in the Armed
30 Forces of the United States or nationality of such person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 k. For any real estate broker, real estate salesperson or
33 employee or agent thereof or any other individual, corporation,
34 partnership, or organization, for the purpose of inducing a
35 transaction for the sale or rental of real property from which
36 transaction such person or any of its members may benefit
37 financially, to represent that a change has occurred or will or may
38 occur in the composition with respect to race, creed, color, national
39 origin, ancestry, marital status, civil union status, domestic
40 partnership status, familial status, pregnancy or breastfeeding, sex,
41 gender identity or expression, affectional or sexual orientation,
42 disability, liability for service in the Armed Forces of the United
43 States, nationality, or source of lawful income used for rental or
44 mortgage payments of the owners or occupants in the block,
45 neighborhood or area in which the real property is located, and to
46 represent, directly or indirectly, that this change will or may result
47 in undesirable consequences in the block, neighborhood or area in
48 which the real property is located, including, but not limited to the

1 lowering of property values, an increase in criminal or anti-social
2 behavior, or a decline in the quality of schools or other facilities.

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

20 m. For any person to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Comparisons of wage rates shall be based on wage rates in all of
9 an employer's operations or facilities. For the purposes of this
10 subsection, "member of a protected class" means an employee who
11 has one or more characteristics, including race, creed, color,
12 national origin, nationality, ancestry, age, marital status, civil union
13 status, domestic partnership status, affectional or sexual orientation,
14 genetic information, pregnancy, sex, gender identity or expression,
15 disability or atypical hereditary cellular or blood trait of any
16 individual, or liability for service in the armed forces, for which
17 subsection a. of this section prohibits an employer from refusing to
18 hire or employ or barring or discharging or requiring to retire from
19 employment or discriminating against the individual in
20 compensation or in terms, conditions or privileges of employment.
21 (cf: P.L.2018, c.9, s.2)

22

23 3. Section 5 of P.L.1985, c.73 (C.10:5-12.1) is amended to read
24 as follows:

25 5. **【Notwithstanding any provision of law to the contrary】** As an
26 alternative to or in addition to any other sanction provided by
27 any other applicable law, relief for having been required to retire in
28 violation of the provisions of section 11 of P.L.1945, c.169 (C.10:5-
29 12), shall be available to the person aggrieved by that violation
30 **【solely】** through the procedure initiated by filing a complaint with
31 the Attorney General under the provisions of P.L.1945, c.169
32 (C.10:5-1 et seq.).

33 **【Notwithstanding any provision to the contrary of】** As an
34 alternative to or in addition to any other sanction provided by
35 section 16 of P.L.1945, c.169 (C.10:5-17) or any other applicable
36 law, relief ordered for or granted to a person in connection with his
37 being required to retire in violation of the provisions of section 11
38 of P.L.1945, c.169 (C.10:5-12) shall **【be limited to his】** include
39 reinstatement with back pay and interest.

40 (cf: P.L.1985, c.73, s.5)

41

42 4. Section 4 of P.L.1985, c.73 (C.10:5-2.2) is repealed.

43

44 5. This act shall take effect immediately.

STATEMENT

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This bill amends current law to extend protections against age discrimination by:

1. Deleting the provision of section 1 of P.L.1938, c.295 (C.10:3-1) that permits a governmental employer to require retirement when an employee attains a particular age if the employer can show “that the retirement age bears a manifest relationship to the employment in question”;

2. Deleting the provision of section 11 of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-12) that states: “nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years,” having the effect of no longer permitting employers to refuse to hire persons for the sole reason of being more than 70 years old;

3. Amending section 5 of P.L.1985, c.73 (C.10:5-12.1) to provide that, in a claim of unlawfully being required to retire because of age, an employee has available all of the remedies provided by any applicable law, instead of, as that section currently provides, being limited to filing a complaint with the Attorney General and having relief limited to reinstatement with back pay and interest; and

4. Repealing section 4 of P.L.1985, c.73 (C.10:5-2.2), which permits institutions of higher education to require tenured employees to retire at the age of 70 years.

ASSEMBLY AGING AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 681

STATE OF NEW JERSEY

DATED: JANUARY 13, 2021

The Assembly Aging and Senior Services Committee reports favorably Assembly Bill No. 681.

This bill amends current law to extend protections against age discrimination by:

1. Deleting the provision of section 1 of P.L.1938, c.295 (C.10:3-1) that permits a governmental employer to require retirement when an employee attains a particular age if the employer can show “that the retirement age bears a manifest relationship to the employment in question”;

2. Deleting the provision of section 11 of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-12) that states: “nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years,” having the effect of no longer permitting employers to refuse to hire persons for the sole reason of being more than 70 years old;

3. Amending section 5 of P.L.1985, c.73 (C.10:5-12.1) to provide that, in a claim of unlawfully being required to retire because of age, an employee has available all of the remedies provided by any applicable law, instead of, as that section currently provides, being limited to filing a complaint with the Attorney General and having relief limited to reinstatement with back pay and interest; and

4. Repealing section 4 of P.L.1985, c.73 (C.10:5-2.2), which permits institutions of higher education to require tenured employees to retire at the age of 70 years.

This bill was prefiled for introduction in the 2020-2021 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 681

STATE OF NEW JERSEY

DATED: MAY 6, 2021

The Senate Labor Committee reports favorably Assembly Bill No. 681.

This bill amends current law to extend protections against age discrimination by:

1. Deleting the provision of section 1 of P.L.1938, c.295 (C.10:3-1) that permits a governmental employer to require retirement when an employee attains a particular age if the employer can show “that the retirement age bears a manifest relationship to the employment in question”;

2. Deleting the provision of section 11 of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-12) that states: “nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years,” having the effect of no longer permitting employers to refuse to hire persons for the sole reason of being more than 70 years old;

3. Amending section 5 of P.L.1985, c.73 (C.10:5-12.1) to provide that, in a claim of unlawfully being required to retire because of age, an employee has available all of the remedies provided by any applicable law, instead of, as that section currently provides, being limited to filing a complaint with the Attorney General and having relief limited to reinstatement with back pay and interest; and

4. Repealing section 4 of P.L.1985, c.73 (C.10:5-2.2), which permits institutions of higher education to require tenured employees to retire at the age of 70 years.

This bill was pre-filed for introduction in the 2020-2021 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE, No. 397

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Co-Sponsored by:

Senators Diegnan, Thompson, Greenstein, Pou, Lagana and Testa

SYNOPSIS

Expands scope of law prohibiting age discrimination.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/6/2021)

1 AN ACT concerning age discrimination and revising various parts of
2 the statutory law.

3

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

6

7 1. Section 1 of P.L.1938, c.295 (C.10:3-1) is amended to read
8 as follows:

9 1. In the selection of persons for employment in the service of
10 the State, or of any county or municipality thereof, no appointing
11 officer shall discriminate against any such applicant because such
12 applicant has attained the age of at least 40 years, at the time of said
13 application for employment. Any provisions of law, executive
14 order, rule or regulation to the contrary notwithstanding, no person
15 other than a justice of the Supreme Court or a judge of the Superior
16 Court pursuant to Article VI, Section VI, paragraph 3 of the
17 Constitution of the State of New Jersey, or a judge of the Tax
18 Court, or a judge of the Office of Administrative Law or a judge of
19 the Division of Workers' Compensation, or a member of the
20 Division of State Police, employed in the service of the State, or of
21 any county or municipality thereof, or a member of a police or fire
22 department employed in the service of the State or of any county or
23 municipality thereof, shall be required to retire upon the attainment
24 of a particular age unless the public employer can show that **the**
25 retirement age bears a manifest relationship to the employment in
26 question or that **the** person in the service of the State, or of any
27 county or municipality thereof, is unable to adequately perform the
28 person's duties. A contract of tenure or similar arrangement
29 providing for tenure shall not bar a public employer from showing
30 that **a** retirement age bears a manifest relationship to the
31 employment in question or that **the** person in the service of the
32 State, or of any county or municipality thereof, is unable to
33 adequately perform the person's duties. A person in the employ of
34 the State, or of any county or municipality thereof, who is required
35 to retire upon the attainment of a particular age in violation of this
36 section shall be entitled to reinstatement with back pay and interest.
37 (cf: P.L.1999, c.380, s.15)

38

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **thus in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 information, pregnancy or breastfeeding, sex, gender identity or
2 expression, disability or atypical hereditary cellular or blood trait of
3 any individual, or because of the liability for service in the Armed
4 Forces of the United States or the nationality of any individual, or
5 because of the refusal to submit to a genetic test or make available
6 the results of a genetic test to an employer, to refuse to hire or
7 employ or to bar or to discharge or require to retire, unless justified
8 by lawful considerations other than age, from employment such
9 individual or to discriminate against such individual in
10 compensation or in terms, conditions or privileges of employment;
11 provided, however, it shall not be an unlawful employment practice
12 to refuse to accept for employment an applicant who has received a
13 notice of induction or orders to report for active duty in the armed
14 forces; provided further that nothing herein contained shall be
15 construed to bar an employer from refusing to accept for
16 employment any person on the basis of sex in those certain
17 circumstances where sex is a bona fide occupational qualification,
18 reasonably necessary to the normal operation of the particular
19 business or enterprise; [provided further that nothing herein
20 contained shall be construed to bar an employer from refusing to
21 accept for employment or to promote any person over 70 years of
22 age;] provided further that it shall not be an unlawful employment
23 practice for a club exclusively social or fraternal to use club
24 membership as a uniform qualification for employment, or for a
25 religious association or organization to utilize religious affiliation
26 as a uniform qualification in the employment of clergy, religious
27 teachers or other employees engaged in the religious activities of
28 the association or organization, or in following the tenets of its
29 religion in establishing and utilizing criteria for employment of an
30 employee; provided further, that it shall not be an unlawful
31 employment practice to require the retirement of any employee
32 who, for the two-year period immediately before retirement, is
33 employed in a bona fide executive or a high policy-making position,
34 if that employee is entitled to an immediate non-forfeitable annual
35 retirement benefit from a pension, profit sharing, savings or
36 deferred retirement plan, or any combination of those plans, of the
37 employer of that employee which equals in the aggregate at least
38 \$27,000.00; and provided further that an employer may restrict
39 employment to citizens of the United States where such restriction
40 is required by federal law or is otherwise necessary to protect the
41 national interest.

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

46 For the purposes of this subsection, a "bona fide executive" is a
47 top level employee who exercises substantial executive authority

1 over a significant number of employees and a large volume of
2 business. A "high policy-making position" is a position in which a
3 person plays a significant role in developing policy and in
4 recommending the implementation thereof.

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

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

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

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

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

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

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

27 f. (1) For any owner, lessee, proprietor, manager,
28 superintendent, agent, or employee of any place of public
29 accommodation directly or indirectly to refuse, withhold from or
30 deny to any person any of the accommodations, advantages,
31 facilities or privileges thereof, or to discriminate against any person
32 in the furnishing thereof, or directly or indirectly to publish,
33 circulate, issue, display, post or mail any written or printed
34 communication, notice, or advertisement to the effect that any of
35 the accommodations, advantages, facilities, or privileges of any
36 such place will be refused, withheld from, or denied to any person
37 on account of the race, creed, color, national origin, ancestry,
38 marital status, civil union status, domestic partnership status,
39 pregnancy or breastfeeding, sex, gender identity or expression,
40 affectional or sexual orientation, disability, liability for service in
41 the Armed Forces of the United States or nationality of such person,
42 or that the patronage or custom thereat of any person of any
43 particular race, creed, color, national origin, ancestry, marital status,
44 civil union status, domestic partnership status, pregnancy or
45 breastfeeding status, sex, gender identity or expression, affectional
46 or sexual orientation, disability, liability for service in the Armed
47 Forces of the United States or nationality is unwelcome,

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

21 (2) Notwithstanding the definition of "a place of public
22 accommodation" as set forth in subsection 1. of section 5 of
23 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
24 manager, superintendent, agent, or employee of any private club or
25 association to directly or indirectly refuse, withhold from or deny to
26 any individual who has been accepted as a club member and has
27 contracted for or is otherwise entitled to full club membership any
28 of the accommodations, advantages, facilities or privileges thereof,
29 or to discriminate against any member in the furnishing thereof on
30 account of the race, creed, color, national origin, ancestry, marital
31 status, civil union status, domestic partnership status, pregnancy or
32 breastfeeding, sex, gender identity, or expression, affectional or
33 sexual orientation, disability, liability for service in the Armed
34 Forces of the United States or nationality of such person.

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

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

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

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

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

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

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

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

46 (3) To print, publish, circulate, issue, display, post, or mail, or
47 cause to be printed, published, circulated, issued, displayed, posted

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

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

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

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

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

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

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

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

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

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

40 k. For any real estate broker, real estate salesperson or
41 employee or agent thereof or any other individual, corporation,
42 partnership, or organization, for the purpose of inducing a
43 transaction for the sale or rental of real property from which
44 transaction such person or any of its members may benefit
45 financially, to represent that a change has occurred or will or may
46 occur in the composition with respect to race, creed, color, national
47 origin, ancestry, marital status, civil union status, domestic

1 partnership status, familial status, pregnancy or breastfeeding, sex,
2 gender identity or expression, affectional or sexual orientation,
3 disability, liability for service in the Armed Forces of the United
4 States, nationality, or source of lawful income used for rental or
5 mortgage payments of the owners or occupants in the block,
6 neighborhood or area in which the real property is located, and to
7 represent, directly or indirectly, that this change will or may result
8 in undesirable consequences in the block, neighborhood or area in
9 which the real property is located, including, but not limited to the
10 lowering of property values, an increase in criminal or anti-social
11 behavior, or a decline in the quality of schools or other facilities.

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

29 m. For any person to:

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

44 (2) Refuse to grant or accept any letter of credit or other
45 document which evidences the transfer of funds or credit, or refuse
46 to enter into any contract for the exchange of goods or services, on

1 the ground that it does not contain such a discriminatory provision
2 or certification.

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

11 n. For any person to aid, abet, incite, compel, coerce, or induce
12 the doing of any act forbidden by subsections l. and m. of section
13 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
14 do so. Such prohibited conduct shall include, but not be limited to:

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

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

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

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

46 q. (1) For any employer to impose upon a person as a
47 condition of obtaining or retaining employment, including

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

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

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

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

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

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

46 (i) The identifiable cost of the accommodation, including the
47 costs of loss of productivity and of retaining or hiring employees or

1 transferring employees from one facility to another, in relation to
2 the size and operating cost of the employer.

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

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

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

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

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

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

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

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

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

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

40 t. For an employer to pay any of its employees who is a
41 member of a protected class at a rate of compensation, including
42 benefits, which is less than the rate paid by the employer to
43 employees who are not members of the protected class for
44 substantially similar work, when viewed as a composite of skill,
45 effort and responsibility. An employer who is paying a rate of
46 compensation in violation of this subsection shall not reduce the
47 rate of compensation of any employee in order to comply with this

1 subsection. An employer may pay a different rate of compensation
2 only if the employer demonstrates that the differential is made
3 pursuant to a seniority system, a merit system, or the employer
4 demonstrates:

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

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

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

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

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

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

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

34

35 3. Section 5 of P.L.1985, c.73 (C.10:5-12.1) is amended to read
36 as follows:

37 5. **【Notwithstanding any provision of law to the contrary】** As
38 an alternative to or in addition to any other sanction provided by
39 any other applicable law, relief for having been required to retire in
40 violation of the provisions of section 11 of P.L.1945, c.169 (C.10:5-
41 12), shall be available to the person aggrieved by that violation
42 **【solely】** through the procedure initiated by filing a complaint with
43 the Attorney General under the provisions of P.L.1945, c.169
44 (C.10:5-1 et seq.).

45 **【Notwithstanding any provision to the contrary of】** As an
46 alternative to or in addition to any other sanction provided by
47 section 16 of P.L.1945, c.169 (C.10:5-17) or any other applicable

1 law, relief ordered for or granted to a person in connection with his
2 being required to retire in violation of the provisions of section 11
3 of P.L.1945, c.169 (C.10:5-12) shall **【be limited to his】** include
4 reinstatement with back pay and interest.
5 (cf: P.L.1985, c.73, s.5)

6

7 4. Section 4 of P.L.1985, c.73 (C.10:5-2.2) is repealed.

8

9 5. This act shall take effect immediately.

10

11

12

STATEMENT

13

14 This bill amends current law to extend protections against age
15 discrimination by:

16 1. Deleting the provision of section 1 of P.L.1938, c.295
17 (C.10:3-1) that permits a governmental employer to require
18 retirement when an employee attains a particular age if the
19 employer can show “that the retirement age bears a manifest
20 relationship to the employment in question”;

21 2. Deleting the provision of section 11 of the "Law Against
22 Discrimination," P.L.1945, c.169 (C.10:5-12) that states: “nothing
23 herein contained shall be construed to bar an employer from
24 refusing to accept for employment or to promote any person over 70
25 years,” having the effect of no longer permitting employers to
26 refuse to hire persons for the sole reason of being more than 70
27 years old;

28 3. Amending section 5 of P.L.1985, c.73 (C.10:5-12.1) to
29 provide that, in a claim of unlawfully being required to retire
30 because of age, an employee has available all of the remedies
31 provided by any applicable law, instead of, as that section currently
32 provides, being limited to filing a complaint with the Attorney
33 General and having relief limited to reinstatement with back pay
34 and interest; and

35 4. Repealing section 4 of P.L.1985, c.73 (C.10:5-2.2), which
36 permits institutions of higher education to require tenured
37 employees to retire at the age of 70 years.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 397

STATE OF NEW JERSEY

DATED: MAY 6, 2021

The Senate Labor Committee reports favorably Senate Bill No. 397.

This bill amends current law to extend protections against age discrimination by:

1. Deleting the provision of section 1 of P.L.1938, c.295 (C.10:3-1) that permits a governmental employer to require retirement when an employee attains a particular age if the employer can show “that the retirement age bears a manifest relationship to the employment in question”;

2. Deleting the provision of section 11 of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-12) that states: “nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years,” having the effect of no longer permitting employers to refuse to hire persons for the sole reason of being more than 70 years old;

3. Amending section 5 of P.L.1985, c.73 (C.10:5-12.1) to provide that, in a claim of unlawfully being required to retire because of age, an employee has available all of the remedies provided by any applicable law, instead of, as that section currently provides, being limited to filing a complaint with the Attorney General and having relief limited to reinstatement with back pay and interest; and

4. Repealing section 4 of P.L.1985, c.73 (C.10:5-2.2), which permits institutions of higher education to require tenured employees to retire at the age of 70 years.

This bill was pre-filed for introduction in the 2020-2021 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

Governor Murphy Signs Legislation to Combat Age Discrimination in New Jersey

10/5/2021

TRENTON – Governor Phil Murphy today signed A681 into law, which expands the scope of the Law Against Discrimination (LAD) by providing protections against age discrimination by employers.

“Discrimination of any kind has no place in New Jersey,” **said Governor Murphy**. “Working across departments, alongside the Legislature, and with our partners in advocacy, we are committed to rooting out discrimination and ensuring a stronger and fairer New Jersey for all, regardless of age.”

Currently, the LAD prohibits discrimination and harassment based on actual or perceived race, religion, national origin, gender, sexual orientation, gender identity or expression, disability, and other protected characteristics, including age. Today’s bill signing amends the LAD to extend protections against age discrimination by:

- Implementing a higher standard for a government employer in terms of setting a mandatory retirement age;
- Eliminating the provision of the law that allows employers not to hire or promote workers over 70 years old;
- Removing the provision within the law that permits higher education institutions to require tenured employees to retire at 70 years old; and
- Expanding the remedies available to an employee required to retire due to age to include all remedies available under the LAD and not just reinstatement of employment with backpay.

Primary sponsors of the bill include Senate Majority Leader Loretta Weinberg, Senator Shirley Turner, and Assemblymembers Valerie Vainieri Huttle, Angela McKnight, and BettyLou DeCroce.

“As in many places around the country, New Jersey’s workforce is aging, and we need to be proactive in protecting those older workers against age discrimination,” **said Senate Majority Leader Loretta Weinberg, a prime sponsor of the bill**. “One way to do that is to bring these outdated laws into the 21st Century, in order to grant these valued employees the same protections enjoyed by younger colleagues. I am particularly pleased that one provision of this new law serves to delete language dating back to 1938 that permitted an employer to force retirement on an individual if that employer can show that ‘age bears a manifest relationship to the employment in question.’ This sort of vague, subjective wording has no place in any state that professes to care about all of its workers.”

“70 is the new 50, and older individuals are continuing to work either due to financial need or because they still have the energy, skills, and experience to offer the workforce,” **said Senator Shirley Turner**. “I am pleased that we have taken the steps to protect and empower those who might otherwise be forced into retirement before they are ready.”

“Not every worker has the luxury of retiring at age 65,” **said Assemblymembers Valerie Vainieri Huttle and Angela McKnight, in a joint statement**. “Some will still need to work well into their golden years to be able to live independently. Others may simply want to keep working for their own personal fulfillment. In any case, older workers should be able to retire by their own volition, not because an employer forced them out solely because of their age. This discriminatory practice furthers unfounded assumptions about age and ability and restricts opportunities for older adults in the workforce who may still need a source of income. This new law is long overdue. It’s time to update our State laws to fully prohibit age discrimination in the workplace and open doors for older workers to stay employed.”

“New Jersey Advocates for Aging Well (NJAAW) applauds the passage of this bill that eliminates mandatory retirement age and looks forward to the positive impact it will have for so many people in our state,” **said Cathy Rowe, Executive Director at NJAAW.**