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LAW/RWH

P.L.2013, CHAPTER 220, *approved January 17, 2014*
Senate, No. 2995 (*First Reprint*)

1 AN ACT concerning discrimination based on pregnancy, childbirth
2 or related medical conditions and amending ¹and supplementing¹
3 P.L.1945, c.169.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 ¹1. (New section) The Legislature finds and declares:

9 a. That pregnant women are vulnerable to discrimination in the
10 workplace in New Jersey, as indicated in reports that women who
11 request an accommodation that will allow them to maintain a
12 healthy pregnancy, or who need a reasonable accommodation while
13 recovering from childbirth, are being removed from their positions,
14 placed on unpaid leave, or fired;

15 b. It is the intent of the Legislature to combat this form of
16 discrimination by requiring employers to provide reasonable
17 accommodations to pregnant women and those who suffer medical
18 conditions related to pregnancy and childbirth, such as bathroom
19 breaks, breaks for increased water intake, periodic rest, assistance
20 with manual labor, job restructuring or modified work schedules,
21 and temporary transfers to less strenuous or hazardous work; and

22 c. It is not the intent of the Legislature to require such
23 accommodations if their provision would cause an undue hardship
24 in the conduct of an employer's business.¹
25

26 ¹**[1.]** ^{2.}¹ Section 11 of P.L.1945, c.169 (C.10:5-12) is amended
27 to read as follows:

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

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted November 7, 2013.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
7 to deny to or withhold from any person or group of persons any real
8 property or part or portion thereof because of race, creed, color,
9 national origin, ancestry, marital status, civil union status, domestic
10 partnership status, pregnancy, sex, gender identity or expression,
11 affectional or sexual orientation, familial status, disability,
12 nationality, or source of lawful income used for rental or mortgage
13 payments;

14 (2) To discriminate against any person or group of persons
15 because of race, creed, color, national origin, ancestry, marital
16 status, civil union status, domestic partnership status, pregnancy,
17 sex, gender identity or expression, affectional or sexual orientation,
18 familial status, disability, nationality or source of lawful income
19 used for rental or mortgage payments in the terms, conditions or
20 privileges of the sale, rental or lease of any real property or part or
21 portion thereof or in the furnishing of facilities or services in
22 connection therewith;

23 (3) To print, publish, circulate, issue, display, post or mail, or
24 cause to be printed, published, circulated, issued, displayed, posted
25 or mailed any statement, advertisement, publication or sign, or to
26 use any form of application for the purchase, rental, lease,
27 assignment or sublease of any real property or part or portion
28 thereof, or to make any record or inquiry in connection with the
29 prospective purchase, rental, lease, assignment, or sublease of any
30 real property, or part or portion thereof which expresses, directly or
31 indirectly, any limitation, specification or discrimination as to race,
32 creed, color, national origin, ancestry, marital status, civil union
33 status, domestic partnership status, pregnancy, sex, gender identity,
34 or expression, affectional or sexual orientation, familial status,
35 disability, nationality, or source of lawful income used for rental or
36 mortgage payments, or any intent to make any such limitation,
37 specification or discrimination, and the production of any such
38 statement, advertisement, publicity, sign, form of application,
39 record, or inquiry purporting to be made by any such person shall
40 be presumptive evidence in any action that the same was authorized
41 by such person; provided, however, that nothing contained in this
42 subsection shall be construed to bar any person from refusing to
43 sell, rent, lease, assign or sublease or from advertising or recording
44 a qualification as to sex for any room, apartment, flat in a dwelling
45 or residential facility which is planned exclusively for and occupied
46 by individuals of one sex to any individual of the exclusively
47 opposite sex on the basis of sex provided individuals shall be
48 qualified based on their gender 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, sex, gender identity or expression,
23 affectional or sexual orientation, disability, nationality, or source of
24 lawful income used for rental or mortgage payments, or to represent
25 that any real property or portion thereof is not available for
26 inspection, sale, rental, lease, assignment, or sublease when in fact
27 it is so available, or otherwise to deny or withhold any real property
28 or any part or portion of facilities thereof to or from any person or
29 group of persons because of race, creed, color, national origin,
30 ancestry, marital status, civil union status, domestic partnership
31 status, familial status, pregnancy, sex, gender identity or expression,
32 affectional or sexual orientation, disability or nationality;

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

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

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

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

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

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

40 (1) To discriminate against any person or group of persons
41 because of race, creed, color, national origin, ancestry, marital
42 status, civil union status, domestic partnership status, pregnancy,
43 sex, gender identity or expression, affectional or sexual orientation,
44 disability, familial status or nationality, in the granting,
45 withholding, extending, modifying, renewing, or purchasing, or in
46 the fixing of the rates, terms, conditions or provisions of any such
47 loan, extension of credit or financial assistance or purchase thereof
48 or in the extension of services in connection therewith;

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

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

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

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

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

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

46 l. For any person to refuse to buy from, sell to, lease from or
47 to, license, contract with, or trade with, provide goods, services or
48 information to, or otherwise do business with any other person on

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

14 m. For any person to:

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

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

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

42 n. For any person to aid, abet, incite, compel, coerce, or induce
43 the doing of any act forbidden by subsections l. and m. of section
44 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
45 do so. Such prohibited conduct shall include, but not be limited to:

46 (1) Buying from, selling to, leasing from or to, licensing,
47 contracting with, trading with, providing goods, services, or
48 information to, or otherwise doing business with any person

1 because that person does, or agrees or attempts to do, any such act
2 or any act prohibited by this subsection; or

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

12 o. For any multiple listing service, real estate brokers'
13 organization or other service, organization or facility related to the
14 business of selling or renting dwellings to deny any person access
15 to or membership or participation in such organization, or to
16 discriminate against such person in the terms or conditions of such
17 access, membership, or participation, on account of race, creed,
18 color, national origin, ancestry, age, marital status, civil union
19 status, domestic partnership status, familial status, pregnancy, sex,
20 gender identity or expression, affectional or sexual orientation,
21 disability or nationality.

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

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

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

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

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

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

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

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

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

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

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

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

46 (ii) This subsection q. shall not apply where the uniform
47 application of terms and conditions of attendance to employees is
48 essential to prevent undue hardship to the employer. The burden of

1 proof regarding the applicability of this subparagraph (d) shall be
2 upon the employer.

3 r. ¹For any employer to take reprisals against any employee for
4 requesting from any other employee or former employee of the
5 employer information regarding the job title, occupational category,
6 and rate of compensation, including benefits, of any employee or
7 former employee of the employer, or the gender, race, ethnicity,
8 military status, or national origin of any employee or former
9 employee of the employer, regardless of whether the request was
10 responded to, if the purpose of the request for the information was
11 to assist in investigating the possibility of the occurrence of, or in
12 taking of legal action regarding, potential discriminatory treatment
13 concerning pay, compensation, bonuses, other compensation, or
14 benefits. Nothing in this subsection shall be construed to require an
15 employee to disclose such information about the employee herself
16 to any other employee or former employee of the employer or to
17 any authorized representative of the other employee or former
18 employee.

19 s.¹ For an employer to treat, for employment-related purposes, a
20 woman ¹employee that the employer knows, or should know, is¹
21 affected by pregnancy in a manner less favorable than the treatment
22 of other persons not affected by pregnancy but similar in their
23 ability or inability to work. ¹[An] In addition, an¹ employer of an
24 employee who is a woman affected by pregnancy shall make
25 available to the employee reasonable accommodation ¹in the
26 workplace, such as bathroom breaks, breaks for increased water
27 intake, periodic rest, assistance with manual labor, job restructuring
28 or modified work schedules, and temporary transfers to less
29 strenuous or hazardous work,¹ for needs related to the pregnancy
30 when the employee, ¹[with] based on¹ the advice of her physician,
31 requests the accommodation, ¹[and] unless the employer can
32 demonstrate that providing the accommodation would be an undue
33 hardship on the business operations of the employer. The
34 employer¹ shall not in any way penalize the employee in terms,
35 conditions or privileges of employment for ¹requesting or¹ using the
36 accommodation ¹[or, whenever accommodation is not feasible, for
37 taking an amount of time away from work as required by the
38 pregnancy, as certified by the physician of the employee taking into
39 account the condition of the employee and the job requirements].
40 Workplace accommodation provided pursuant to this subsection and
41 paid or unpaid leave provided to an employee affected by
42 pregnancy shall not be provided in a manner less favorable than
43 accommodations or leave provided to other employees not affected
44 by pregnancy but similar in their ability or inability to work. This
45 subsection shall not be construed as otherwise increasing or
46 decreasing any employee's rights under law to paid or unpaid leave
47 in connection with pregnancy¹.

1 For the purposes of this section “pregnancy” means pregnancy,
2 childbirth, or medical conditions related to pregnancy or childbirth¹,
3 including recovery from childbirth.

4 For the purposes of this subsection, in determining whether an
5 accommodation would impose undue hardship on the operation of
6 an employer’s business, the factors to be considered include: the
7 overall size of the employer’s business with respect to the number
8 of employees, number and type of facilities, and size of budget; the
9 type of the employer’s operations, including the composition and
10 structure of the employer’s workforce; the nature and cost of the
11 accommodation needed, taking into consideration the availability of
12 tax credits, tax deductions, and outside funding; and the extent to
13 which the accommodation would involve waiver of an essential
14 requirement of a job as opposed to a tangential or non-business
15 necessity requirement¹.

16 (cf: P.L.2013, c.154)

17

18 ¹**[2.] 3.**¹ This act shall take effect immediately.

19

20

21

22

23 Prohibits discrimination based on pregnancy, childbirth or
24 related medical conditions.

SENATE, No. 2995

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED SEPTEMBER 30, 2013

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Prohibits discrimination based on pregnancy, childbirth or related medical conditions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/8/2013)

1 AN ACT concerning discrimination based on pregnancy, childbirth
2 or related medical conditions and amending P.L.1945, c.169.

3

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

6

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

37 c. For any employer or employment agency to print or circulate
38 or cause to be printed or circulated any statement, advertisement or
39 publication, or to use any form of application for employment, or to
40 make an inquiry in connection with prospective employment, which
41 expresses, directly or indirectly, any limitation, specification or
42 discrimination as to race, creed, color, national origin, ancestry,
43 age, marital status, civil union status, domestic partnership status,
44 affectional or sexual orientation, gender identity or expression,
45 disability, nationality, pregnancy, or sex or liability of any applicant
46 for employment for service in the Armed Forces of the United
47 States, or any intent to make any such limitation, specification or

1 discrimination, unless based upon a bona fide occupational
2 qualification.

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

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

14 f. (1) For any owner, lessee, proprietor, manager,
15 superintendent, agent, or employee of any place of public
16 accommodation directly or indirectly to refuse, withhold from or
17 deny to any person any of the accommodations, advantages,
18 facilities or privileges thereof, or to discriminate against any person
19 in the furnishing thereof, or directly or indirectly to publish,
20 circulate, issue, display, post or mail any written or printed
21 communication, notice, or advertisement to the effect that any of
22 the accommodations, advantages, facilities, or privileges of any
23 such place will be refused, withheld from, or denied to any person
24 on account of the race, creed, color, national origin, ancestry,
25 marital status, civil union status, domestic partnership status,
26 pregnancy, sex, gender identity or expression, affectional or sexual
27 orientation, disability or nationality of such person, or that the
28 patronage or custom thereof of any person of any particular race,
29 creed, color, national origin, ancestry, marital status, civil union
30 status, domestic partnership status, pregnancy status, sex, gender
31 identity or expression, affectional or sexual orientation, disability or
32 nationality is unwelcome, objectionable or not acceptable, desired
33 or solicited, and the production of any such written or printed
34 communication, notice or advertisement, purporting to relate to any
35 such place and to be made by any owner, lessee, proprietor,
36 superintendent or manager thereof, shall be presumptive evidence in
37 any action that the same was authorized by such person; provided,
38 however, that nothing contained herein shall be construed to bar any
39 place of public accommodation which is in its nature reasonably
40 restricted exclusively to individuals of one sex, and which shall
41 include but not be limited to any summer camp, day camp, or resort
42 camp, bathhouse, dressing room, swimming pool, gymnasium,
43 comfort station, dispensary, clinic or hospital, or school or
44 educational institution which is restricted exclusively to individuals
45 of one sex, provided individuals shall be admitted based on their
46 gender identity or expression, from refusing, withholding from or
47 denying to any individual of the opposite sex any of the
48 accommodations, advantages, facilities or privileges thereof on the

1 basis of sex; provided further, that the foregoing limitation shall not
2 apply to any restaurant as defined in R.S.33:1-1 or place where
3 alcoholic beverages are served.

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

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

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

30 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
31 to deny to or withhold from any person or group of persons any real
32 property or part or portion thereof because of race, creed, color,
33 national origin, ancestry, marital status, civil union status, domestic
34 partnership status, pregnancy, sex, gender identity or expression,
35 affectional or sexual orientation, familial status, disability,
36 nationality, or source of lawful income used for rental or mortgage
37 payments;

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

47 (3) To print, publish, circulate, issue, display, post or mail, or
48 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, pregnancy, sex, gender identity,
10 or expression, affectional or sexual orientation, familial status,
11 disability, nationality, or source of lawful income used for rental or
12 mortgage payments, or any intent to make any such limitation,
13 specification or discrimination, and the production of any such
14 statement, advertisement, publicity, sign, form of application,
15 record, or inquiry purporting to be made by any such person shall
16 be presumptive evidence in any action that the same was authorized
17 by such person; provided, however, that nothing contained in this
18 subsection shall be construed to bar any person from refusing to
19 sell, rent, lease, assign or sublease or from advertising or recording
20 a qualification as to sex for any room, apartment, flat in a dwelling
21 or residential facility which is planned exclusively for and occupied
22 by individuals of one sex to any individual of the exclusively
23 opposite sex on the basis of sex provided individuals shall be
24 qualified based on their gender identity or expression;

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

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

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

39 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
40 sale, rental, lease, assignment, or sublease any real property or part
41 or portion thereof to any person or group of persons or to refuse to
42 negotiate for the sale, rental, lease, assignment, or sublease of any
43 real property or part or portion thereof to any person or group of
44 persons because of race, creed, color, national origin, ancestry,
45 marital status, civil union status, domestic partnership status,
46 familial status, pregnancy, sex, gender identity or expression,
47 affectional or sexual orientation, disability, nationality, or source of
48 lawful income used for rental or mortgage payments, or to represent

1 that any real property or portion thereof is not available for
2 inspection, sale, rental, lease, assignment, or sublease when in fact
3 it is so available, or otherwise to deny or withhold any real property
4 or any part or portion of facilities thereof to or from any person or
5 group of persons because of race, creed, color, national origin,
6 ancestry, marital status, civil union status, domestic partnership
7 status, familial status, pregnancy, sex, gender identity or expression,
8 affectional or sexual orientation, disability or nationality;

9 (2) To discriminate against any person because of race, creed,
10 color, national origin, ancestry, marital status, civil union status,
11 domestic partnership status, familial status, pregnancy, sex, gender
12 identity or expression, affectional or sexual orientation, disability,
13 nationality, or source of lawful income used for rental or mortgage
14 payments in the terms, conditions or privileges of the sale, rental,
15 lease, assignment or sublease of any real property or part or portion
16 thereof or in the furnishing of facilities or services in connection
17 therewith;

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

44 (4) 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 the source of any
47 lawful income received by the person or the source of any lawful
48 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 i. For any person, bank, banking organization, mortgage
9 company, insurance company or other financial institution, lender
10 or credit institution involved in the making or purchasing of any
11 loan or extension of credit, for whatever purpose, whether secured
12 by residential real estate or not, including but not limited to
13 financial assistance for the purchase, acquisition, construction,
14 rehabilitation, repair or maintenance of any real property or part or
15 portion thereof or any agent or employee thereof:

16 (1) To discriminate against any person or group of persons
17 because of race, creed, color, national origin, ancestry, marital
18 status, civil union status, domestic partnership status, pregnancy,
19 sex, gender identity or expression, affectional or sexual orientation,
20 disability, familial status or nationality, in the granting,
21 withholding, extending, modifying, renewing, or purchasing, or in
22 the fixing of the rates, terms, conditions or provisions of any such
23 loan, extension of credit or financial assistance or purchase thereof
24 or in the extension of services in connection therewith;

25 (2) To use any form of application for such loan, extension of
26 credit or financial assistance or to make record or inquiry in
27 connection with applications for any such loan, extension of credit
28 or financial assistance which expresses, directly or indirectly, any
29 limitation, specification or discrimination as to race, creed, color,
30 national origin, ancestry, marital status, civil union status, domestic
31 partnership status, pregnancy, sex, gender identity or expression,
32 affectional or sexual orientation, disability, familial status or
33 nationality or any intent to make any such limitation, specification
34 or discrimination; unless otherwise required by law or regulation to
35 retain or use such information;

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

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

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

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

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

23 l. For any person to refuse to buy from, sell to, lease from or
24 to, license, contract with, or trade with, provide goods, services or
25 information to, or otherwise do business with any other person on
26 the basis of the race, creed, color, national origin, ancestry, age,
27 pregnancy, sex, gender identity or expression, affectional or sexual
28 orientation, marital status, civil union status, domestic partnership
29 status, liability for service in the Armed Forces of the United States,
30 disability, nationality, or source of lawful income used for rental or
31 mortgage payments 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. This subsection shall not prohibit refusals
35 or other actions (1) pertaining to employee-employer collective
36 bargaining, labor disputes, or unfair labor practices, or (2) made or
37 taken in connection with a protest of unlawful discrimination or
38 unlawful employment practices.

39 m. For any person to:

40 (1) Grant or accept any letter of credit or other document which
41 evidences the transfer of funds or credit, or enter into any contract
42 for the exchange of goods or services, where the letter of credit,
43 contract, or other document contains any provisions requiring any
44 person to discriminate against or to certify that he, she or it has not
45 dealt with any other person on the basis of the race, creed, color,
46 national origin, ancestry, age, pregnancy, sex, gender identity or
47 expression, affectional or sexual orientation, marital status, civil
48 union status, domestic partnership status, disability, liability for

1 service in the Armed Forces of the United States, or nationality of
2 such other person or of such other person's spouse, partners,
3 members, stockholders, directors, officers, managers,
4 superintendents, agents, employees, business associates, suppliers,
5 or customers.

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

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

19 n. For any person to aid, abet, incite, compel, coerce, or induce
20 the doing of any act forbidden by subsections l. and m. of section
21 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
22 do so. Such prohibited conduct shall include, but not be limited to:

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

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

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

47 p. Nothing in the provisions of this section shall affect the
48 ability of an employer to require employees to adhere to reasonable

1 workplace appearance, grooming and dress standards not precluded
2 by other provisions of State or federal law, except that an employer
3 shall allow an employee to appear, groom and dress consistent with
4 the employee's gender identity or expression.

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

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

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

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

44 (3) (a) For purposes of this subsection q., "undue hardship"
45 means an accommodation requiring unreasonable expense or
46 difficulty, unreasonable interference with the safe or efficient
47 operation of the workplace or a violation of a bona fide seniority

1 system or a violation of any provision of a bona fide collective
2 bargaining agreement.

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

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

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

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

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

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

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

29 r. For an employer to treat, for employment-related purposes, a
30 woman affected by pregnancy in a manner less favorable than the
31 treatment of other persons not affected by pregnancy but similar in
32 their ability or inability to work. An employer of an employee who
33 is a woman affected by pregnancy shall make available to the
34 employee reasonable accommodation for needs related to the
35 pregnancy when the employee, with the advice of her physician,
36 requests the accommodation, and shall not in any way penalize the
37 employee in terms, conditions or privileges of employment for
38 using the accommodation or, whenever accommodation is not
39 feasible, for taking an amount of time away from work as required
40 by the pregnancy, as certified by the physician of the employee
41 taking into account the condition of the employee and the job
42 requirements.

43 For the purposes of this section "pregnancy" means pregnancy,
44 childbirth, or medical conditions related to pregnancy or childbirth.

45 (cf: P.L.2007, c.325, s.2)

46

47 2. This act shall take effect immediately.

1 STATEMENT

2

3 This bill prohibits workplace discrimination against women
4 affected by pregnancy, childbirth, or related medical conditions.
5 The bill specifies that a woman affected by pregnancy shall not be
6 treated, for employment-related purposes, in a manner less
7 favorable than other persons not affected by pregnancy but similar
8 in their ability or inability to work.

9 The bill requires any employer of a woman employee affected by
10 pregnancy to make available reasonable accommodation for
11 pregnancy-related needs when requested by the employee with the
12 advice of her physician. It prohibits the employer from penalizing
13 the employee in terms, conditions or privileges of employment for
14 using the accommodations or, when accommodations are not
15 feasible, for taking time away from work required by the pregnancy,
16 as certified by a physician of the employee taking into account the
17 condition of the employee and the job requirements.

18 In addition, the bill prohibits discrimination based on pregnancy,
19 childbirth, or related medical conditions, in other areas covered by
20 the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et
21 seq.), besides employment, such as housing, public
22 accommodations, and finance.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2995

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 7, 2013

The Senate Labor Committee reports favorably and with committee amendments Senate Bill No. 2995.

This bill, as amended by the committee, prohibits workplace discrimination against women affected by pregnancy, defined as pregnancy, childbirth, or related medical conditions, including recovery from childbirth.

The bill requires that a woman employee that the employer knows, or should know, is affected by pregnancy not be treated, for employment-related purposes, in a manner less favorable than other persons not affected by pregnancy but similar in their ability or inability to work.

The bill also requires any employer of a woman employee affected by pregnancy to make available reasonable workplace accommodations, 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 pregnancy-related needs when requested by the employee based on the advice of her physician, unless the accommodation causes undue hardship to the business operations of the employer. The bill prohibits those accommodations, and any leave, for pregnant employees from being less favorable than accommodations or leave that the employer chooses to provide to non-pregnant employees similar in their ability or disability to work. It prohibits the employer from penalizing an employee in terms, conditions or privileges of employment for requesting or using the accommodations. The bill states that it is not to be construed as otherwise increasing or decreasing employee rights to paid or unpaid leave.

The bill also prohibits discrimination based on pregnancy, childbirth, or related medical conditions, in other areas covered by the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), such as housing, public accommodations, and finance.

COMMITTEE AMENDMENTS

The amendments adopted by the committee:

1. Specify that the accommodations required by the bill are limited to workplace accommodations, 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, but do not include of paid or unpaid leave;

2. Remove the requirement of the bill that leave be provided in all cases where accommodations are not feasible;

3. Indicate that the employer is not required to provide an accommodation if the employer can demonstrate that the accommodation would cause undue hardship on the business operations of the employer;

4. Specify that factors to be considered in determining whether an accommodation would impose undue hardship on the operation of an employer's business 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;

5. Prohibit accommodations or leave for pregnant employees from being less favorable than accommodations or leave for non-pregnant employees similar in their ability or disability to work; and

6. State that the bill is not intended to otherwise increase or decrease employee rights under law to paid or unpaid leave.

The committee amendments also include a technical amendment to revise the text of the section of law amended by the bill, to reflect a recent amendment to the "Law Against Discrimination" by P.L.2013, c.154.

ASSEMBLY WOMEN AND CHILDREN COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2995

STATE OF NEW JERSEY

DATED: DECEMBER 16, 2013

The Assembly Women and Children Committee reports favorably Senate Bill No. 2995(1R).

This bill prohibits workplace discrimination against women affected by pregnancy, defined as pregnancy, childbirth, or related medical conditions, including recovery from childbirth.

The bill requires that a woman employee that the employer knows, or should know, is affected by pregnancy not be treated, for employment-related purposes, in a manner less favorable than other persons not affected by pregnancy but similar in their ability or inability to work.

The bill also requires any employer of a woman employee affected by pregnancy to make available reasonable workplace accommodations, 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 pregnancy-related needs when requested by the employee based on the advice of her physician, unless the accommodation causes undue hardship to the business operations of the employer. The bill prohibits those accommodations, and any leave, for pregnant employees from being less favorable than accommodations or leave that the employer chooses to provide to non-pregnant employees similar in their ability or disability to work. It prohibits the employer from penalizing an employee in terms, conditions or privileges of employment for requesting or using the accommodations. The bill states that it is not to be construed as otherwise increasing or decreasing employee rights to paid or unpaid leave.

The bill also prohibits discrimination based on pregnancy, childbirth, or related medical conditions, in other areas covered by the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), such as housing, public accommodations, and finance.

This bill is identical to Assembly Bill No. 4486 (Lampitt/Johnson), which the committee also reported on this date.

ASSEMBLY, No. 4486

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED NOVEMBER 25, 2013

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Co-Sponsored by:

Assemblywomen Mosquera, Vainieri Huttle and Jasey

SYNOPSIS

Prohibits discrimination based on pregnancy, childbirth or related medical conditions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/7/2014)

1 AN ACT concerning discrimination based on pregnancy, childbirth
2 or related medical conditions and amending and supplementing
3 P.L.1945, c.169.

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

7
8 1. (New section) The Legislature finds and declares:

9 a. That pregnant women are vulnerable to discrimination in the
10 workplace in New Jersey, as indicated in reports that women who
11 request an accommodation that will allow them to maintain a
12 healthy pregnancy, or who need a reasonable accommodation while
13 recovering from childbirth, are being removed from their positions,
14 placed on unpaid leave, or fired;

15 b. It is the intent of the Legislature to combat this form of
16 discrimination by requiring employers to provide reasonable
17 accommodations to pregnant women and those who suffer medical
18 conditions related to pregnancy and childbirth, such as bathroom
19 breaks, breaks for increased water intake, periodic rest, assistance
20 with manual labor, job restructuring or modified work schedules,
21 and temporary transfers to less strenuous or hazardous work; and

22 c. It is not the intent of the Legislature to require such
23 accommodations if their provision would cause an undue hardship
24 in the conduct of an employer's business.

25
26 2. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to
27 read as follows:

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

30 a. For an employer, because of the race, creed, color, national
31 origin, ancestry, age, marital status, civil union status, domestic
32 partnership status, affectional or sexual orientation, genetic
33 information, pregnancy, sex, gender identity or expression,
34 disability or atypical hereditary cellular or blood trait of any
35 individual, or because of the liability for service in the Armed
36 Forces of the United States or the nationality of any individual, or
37 because of the refusal to submit to a genetic test or make available
38 the results of a genetic test to an employer, to refuse to hire or
39 employ or to bar or to discharge or require to retire, unless justified
40 by lawful considerations other than age, from employment such
41 individual or to discriminate against such individual in
42 compensation or in terms, conditions or privileges of employment;
43 provided, however, it shall not be an unlawful employment practice
44 to refuse to accept for employment an applicant who has received a
45 notice of induction or orders to report for active duty in the armed

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 forces; provided further that nothing herein contained shall be
2 construed to bar an employer from refusing to accept for
3 employment any person on the basis of sex in those certain
4 circumstances where sex is a bona fide occupational qualification,
5 reasonably necessary to the normal operation of the particular
6 business or enterprise; provided further that nothing herein
7 contained shall be construed to bar an employer from refusing to
8 accept for employment or to promote any person over 70 years of
9 age; provided further that it shall not be an unlawful employment
10 practice for a club exclusively social or fraternal to use club
11 membership as a uniform qualification for employment, or for a
12 religious association or organization to utilize religious affiliation
13 as a uniform qualification in the employment of clergy, religious
14 teachers or other employees engaged in the religious activities of
15 the association or organization, or in following the tenets of its
16 religion in establishing and utilizing criteria for employment of an
17 employee; provided further, that it shall not be an unlawful
18 employment practice to require the retirement of any employee
19 who, for the two-year period immediately before retirement, is
20 employed in a bona fide executive or a high policy-making position,
21 if that employee is entitled to an immediate non-forfeitable annual
22 retirement benefit from a pension, profit sharing, savings or
23 deferred retirement plan, or any combination of those plans, of the
24 employer of that employee which equals in the aggregate at least
25 \$27,000.00; and provided further that an employer may restrict
26 employment to citizens of the United States where such restriction
27 is required by federal law or is otherwise necessary to protect the
28 national interest.

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

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

39 b. For a labor organization, because of the race, creed, color,
40 national origin, ancestry, age, marital status, civil union status,
41 domestic partnership status, affectional or sexual orientation,
42 gender identity or expression, disability, pregnancy, or sex of any
43 individual, or because of the liability for service in the Armed
44 Forces of the United States or nationality of any individual, to
45 exclude or to expel from its membership such individual or to
46 discriminate in any way against any of its members, against any
47 applicant for, or individual included in, any apprentice or other
48 training program or against any employer or any individual

1 employed by an employer; provided, however, that nothing herein
2 contained shall be construed to bar a labor organization from
3 excluding from its apprentice or other training programs any person
4 on the basis of sex in those certain circumstances where sex is a
5 bona fide occupational qualification reasonably necessary to the
6 normal operation of the particular apprentice or other training
7 program.

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

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

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

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

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

22 (2) Notwithstanding the definition of "a place of public
23 accommodation" as set forth in subsection l. 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,
33 sex, gender identity, or expression, affectional or sexual orientation,
34 disability 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, sex, gender identity or expression,
6 affectional or sexual orientation, familial status, disability,
7 nationality, or source of lawful income used for rental or mortgage
8 payments;

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

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

44 (4) 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 the source of any
47 lawful income received by the person or the source of any lawful
48 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, sex, gender identity or expression,
18 affectional or sexual orientation, disability, nationality, or source of
19 lawful income used for rental or mortgage payments, or to represent
20 that any real property or portion thereof is not available for
21 inspection, sale, rental, lease, assignment, or sublease when in fact
22 it is so available, or otherwise to deny or withhold any real property
23 or any part or portion of facilities thereof to or from any person or
24 group of persons because of race, creed, color, national origin,
25 ancestry, marital status, civil union status, domestic partnership
26 status, familial status, pregnancy, sex, gender identity or expression,
27 affectional or sexual orientation, disability or nationality;

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

37 (3) To print, publish, circulate, issue, display, post, or mail, or
38 cause to be printed, published, circulated, issued, displayed, posted
39 or mailed any statement, advertisement, publication or sign, or to
40 use any form of application for the purchase, rental, lease,
41 assignment, or sublease of any real property or part or portion
42 thereof or to make any record or inquiry in connection with the
43 prospective purchase, rental, lease, assignment, or sublease of any
44 real property or part or portion thereof which expresses, directly or
45 indirectly, any limitation, specification or discrimination as to race,
46 creed, color, national origin, ancestry, marital status, civil union
47 status, domestic partnership status, familial status, pregnancy, sex,
48 gender identity or expression, affectional or sexual orientation,

1 disability, nationality, or source of lawful income used for rental or
2 mortgage payments or any intent to make any such limitation,
3 specification or discrimination, and the production of any such
4 statement, advertisement, publicity, sign, form of application,
5 record, or inquiry purporting to be made by any such person shall
6 be presumptive evidence in any action that the same was authorized
7 by such person; provided, however, that nothing contained in this
8 subsection h., shall be construed to bar any person from refusing to
9 sell, rent, lease, assign or sublease or from advertising or recording
10 a qualification as to sex for any room, apartment, flat in a dwelling
11 or residential facility which is planned exclusively for and occupied
12 exclusively by individuals of one sex to any individual of the
13 opposite sex on the basis of sex, provided individuals shall be
14 qualified based on their gender identity or expression;

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

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

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

35 (1) To discriminate against any person or group of persons
36 because of race, creed, color, national origin, ancestry, marital
37 status, civil union status, domestic partnership status, pregnancy,
38 sex, gender identity or expression, affectional or sexual orientation,
39 disability, familial status or nationality, in the granting,
40 withholding, extending, modifying, renewing, or purchasing, or in
41 the fixing of the rates, terms, conditions or provisions of any such
42 loan, extension of credit or financial assistance or purchase thereof
43 or in the extension of services in connection therewith;

44 (2) To use any form of application for such loan, extension of
45 credit or financial assistance or to make record or inquiry in
46 connection with applications for any such loan, extension of credit
47 or financial assistance which expresses, directly or indirectly, any
48 limitation, specification or discrimination as to race, creed, color,

1 national origin, ancestry, marital status, civil union status, domestic
2 partnership status, pregnancy, sex, gender identity or expression,
3 affectional or sexual orientation, disability, familial status or
4 nationality or any intent to make any such limitation, specification
5 or discrimination; unless otherwise required by law or regulation to
6 retain or use such information;

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

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

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

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

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

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

1 mortgage payments of such other person or of such other person's
2 spouse, partners, members, stockholders, directors, officers,
3 managers, superintendents, agents, employees, business associates,
4 suppliers, or customers. This subsection shall not prohibit refusals
5 or other actions (1) pertaining to employee-employer collective
6 bargaining, labor disputes, or unfair labor practices, or (2) made or
7 taken in connection with a protest of unlawful discrimination or
8 unlawful employment practices.

9 m. For any person to:

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

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

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

37 n. For any person to aid, abet, incite, compel, coerce, or induce
38 the doing of any act forbidden by subsections l. and m. of section
39 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
40 do so. Such prohibited conduct shall include, but not be limited to:

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

46 (2) Boycotting, commercially blacklisting or refusing to buy
47 from, sell to, lease from or to, license, contract with, provide goods,
48 services or information to, or otherwise do business with any person

1 because that person has not done or refuses to do any such act or
2 any act prohibited by this subsection; provided that this subsection
3 shall not prohibit refusals or other actions either pertaining to
4 employee-employer collective bargaining, labor disputes, or unfair
5 labor practices, or made or taken in connection with a protest of
6 unlawful discrimination or unlawful employment practices.

7 o. For any multiple listing service, real estate brokers'
8 organization or other service, organization or facility related to the
9 business of selling or renting dwellings to deny any person access
10 to or membership or participation in such organization, or to
11 discriminate against such person in the terms or conditions of such
12 access, membership, or participation, on account of race, creed,
13 color, national origin, ancestry, age, marital status, civil union
14 status, domestic partnership status, familial status, pregnancy, sex,
15 gender identity or expression, affectional or sexual orientation,
16 disability or nationality.

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

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

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

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

46 (2) For an employer to refuse to permit an employee to utilize
47 leave, as provided for in this subsection q., which is solely used to
48 accommodate the employee's sincerely held religious observance or

1 practice. Except where it would cause an employer to incur an
2 undue hardship, no person shall be required to remain at his place
3 of employment during any day or days or portion thereof that, as a
4 requirement of his religion, he observes as his Sabbath or other holy
5 day, including a reasonable time prior and subsequent thereto for
6 travel between his place of employment and his home; provided that
7 any such absence from work shall, wherever practicable in the
8 reasonable judgment of the employer, be made up by an equivalent
9 amount of time and work at some other mutually convenient time,
10 or shall be charged against any leave with pay ordinarily granted,
11 other than sick leave, and any such absence not so made up or
12 charged, may be treated by the employer of that person as leave
13 taken without pay.

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

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

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

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

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

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

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

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

46 r. For any employer to take reprisals against any employee for
47 requesting from any other employee or former employee of the
48 employer information regarding the job title, occupational category,

1 and rate of compensation, including benefits, of any employee or
2 former employee of the employer, or the gender, race, ethnicity,
3 military status, or national origin of any employee or former
4 employee of the employer, regardless of whether the request was
5 responded to, if the purpose of the request for the information was
6 to assist in investigating the possibility of the occurrence of, or in
7 taking of legal action regarding, potential discriminatory treatment
8 concerning pay, compensation, bonuses, other compensation, or
9 benefits. Nothing in this subsection shall be construed to require an
10 employee to disclose such information about the employee herself
11 to any other employee or former employee of the employer or to
12 any authorized representative of the other employee or former
13 employee.

14 s. For an employer to treat, for employment-related purposes, a
15 woman employee that the employer knows, or should know, is
16 affected by pregnancy in a manner less favorable than the treatment
17 of other persons not affected by pregnancy but similar in their
18 ability or inability to work. In addition, an employer of an
19 employee who is a woman affected by pregnancy shall make
20 available to the employee reasonable accommodation in the
21 workplace, such as bathroom breaks, breaks for increased water
22 intake, periodic rest, assistance with manual labor, job restructuring
23 or modified work schedules, and temporary transfers to less
24 strenuous or hazardous work, for needs related to the pregnancy
25 when the employee, based on the advice of her physician, requests
26 the accommodation, unless the employer can demonstrate that
27 providing the accommodation would be an undue hardship on the
28 business operations of the employer. The employer shall not in any
29 way penalize the employee in terms, conditions or privileges of
30 employment for requesting or using the accommodation.
31 Workplace accommodation provided pursuant to this subsection and
32 paid or unpaid leave provided to an employee affected by
33 pregnancy shall not be provided in a manner less favorable than
34 accommodations or leave provided to other employees not affected
35 by pregnancy but similar in their ability or inability to work. This
36 subsection shall not be construed as otherwise increasing or
37 decreasing any employee's rights under law to paid or unpaid leave
38 in connection with pregnancy.

39 For the purposes of this section "pregnancy" means pregnancy,
40 childbirth, or medical conditions related to pregnancy or childbirth,
41 including recovery from childbirth.

42 For the purposes of this subsection, in determining whether an
43 accommodation would impose undue hardship on the operation of
44 an employer's business, the factors to be considered include: the
45 overall size of the employer's business with respect to the number
46 of employees, number and type of facilities, and size of budget; the
47 type of the employer's operations, including the composition and
48 structure of the employer's workforce; the nature and cost of the

1 accommodation needed, taking into consideration the availability of
2 tax credits, tax deductions, and outside funding; and the extent to
3 which the accommodation would involve waiver of an essential
4 requirement of a job as opposed to a tangential or non-business
5 necessity requirement.

6 (cf: P.L.2013, c.154)

7
8 3. This act shall take effect immediately.

9
10
11 STATEMENT

12
13 This bill prohibits workplace discrimination against women
14 affected by pregnancy, defined as pregnancy, childbirth, or related
15 medical conditions, including recovery from childbirth.

16 The bill requires that a woman employee that the employer
17 knows, or should know, is affected by pregnancy not be treated, for
18 employment-related purposes, in a manner less favorable than other
19 persons not affected by pregnancy but similar in their ability or
20 inability to work.

21 The bill also requires any employer of a woman employee
22 affected by pregnancy to make available reasonable workplace
23 accommodation, such as bathroom breaks, breaks for increased
24 water intake, periodic rest, assistance with manual labor, job
25 restructuring or modified work schedules, and temporary transfers
26 to less strenuous or hazardous work, for pregnancy-related needs
27 when requested by the employee based on the advice of her
28 physician, unless the accommodation causes undue hardship to the
29 business operations of the employer. The bill prohibits those
30 accommodations, and any leave, for pregnant employees from being
31 less favorable than accommodations or leave that the employer
32 chooses to provide to non-pregnant employees similar in their
33 ability or disability to work. It prohibits the employer from
34 penalizing an employee in terms, conditions or privileges of
35 employment for requesting or using the accommodations. The bill
36 states that it is not to be construed as otherwise increasing or
37 decreasing employee rights to paid or unpaid leave.

38 The bill also prohibits discrimination based on pregnancy,
39 childbirth, or related medical conditions, in other areas covered by
40 the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et
41 seq.), such as housing, public accommodations, and finance.

ASSEMBLY WOMEN AND CHILDREN COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4486

STATE OF NEW JERSEY

DATED: DECEMBER 16, 2013

The Assembly Women and Children Committee reports favorably on Assembly, No. 4486.

This bill prohibits workplace discrimination against women affected by pregnancy, defined as pregnancy, childbirth, or related medical conditions, including recovery from childbirth.

The bill requires that a woman employee that the employer knows, or should know, is affected by pregnancy not be treated, for employment-related purposes, in a manner less favorable than other persons not affected by pregnancy but similar in their ability or inability to work.

The bill also requires any employer of a woman employee affected by pregnancy to make available reasonable workplace accommodation, 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 pregnancy-related needs when requested by the employee based on the advice of her physician, unless the accommodation causes undue hardship to the business operations of the employer. The bill prohibits those accommodations, and any leave, for pregnant employees from being less favorable than accommodations or leave that the employer chooses to provide to non-pregnant employees similar in their ability or disability to work. It prohibits the employer from penalizing an employee in terms, conditions or privileges of employment for requesting or using the accommodations. The bill states that it is not to be construed as otherwise increasing or decreasing employee rights to paid or unpaid leave.

The bill also prohibits discrimination based on pregnancy, childbirth, or related medical conditions, in other areas covered by the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), such as housing, public accommodations, and finance.

This bill is identical to Senate Bill No. 2995 (1R) (Weinberg/Madden), which the committee also reported on this date.