

10:2-1 et. al.

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2006 **CHAPTER:** 100

NJSA: 10:2-1 et. al. (Amends "Law Against Discrimination" concerning gender identity or expressive discrimination)

BILL NO: S362 (Substituted for A930)

SPONSOR(S) Karcher and others

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY:

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: ASSEMBLY: December 14, 2006

SENATE: December 14, 2006

DATE OF APPROVAL: December 19, 2006

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted)

S362

[SPONSOR'S STATEMENT:](#) (Begins on page 25 of original bill) [Yes](#)

COMMITTEE STATEMENT: ASSEMBLY: No

[SENATE:](#) [Yes](#)

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL NOTE: No

A930

[SPONSOR'S STATEMENT:](#) (Begins on page 25 of original bill) [Yes](#)

COMMITTEE STATEMENT: ASSEMBLY: [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

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FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

“New law targets sexual identity discrimination,” 12-20-06 The Record, p.A03

“Transgendered gain a shield from anti-discrimination law,” The Star-Ledger, p.41

“New law protects against discrimination,” 12-20-06 Burlington County Times, p.___

RWH 3/13/08

P.L. 2006, CHAPTER 100, *approved December 19, 2006*
Senate, No. 362 (*Second Reprint*)

1 AN ACT concerning the "Law against Discrimination" and
2 amending various parts of the statutory law ¹[and supplementing
3 P.L.1945, c.169]¹.
4

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

8 1. R.S.10:2-1 is amended to read as follows:

9 10:2-1. Antidiscrimination provisions. Every contract for or on
10 behalf of the State or any county or municipality or other political
11 subdivision of the State, or any agency of or authority created by
12 any of the foregoing, for the construction, alteration or repair of any
13 public building or public work or for the acquisition of materials,
14 equipment, supplies or services shall contain provisions by which
15 the contractor agrees that:

16 a. In the hiring of persons for the performance of work under
17 this contract or any subcontract hereunder, or for the procurement,
18 manufacture, assembling or furnishing of any such materials,
19 equipment, supplies or services to be acquired under this contract,
20 no contractor, nor any person acting on behalf of such contractor or
21 subcontractor, shall, by reason of race, creed, color, national origin,
22 ancestry, marital status, gender identity or expression, affectional or
23 sexual orientation or sex, discriminate against any person who is
24 qualified and available to perform the work to which the
25 employment relates;

26 b. No contractor, subcontractor, nor any person on his behalf
27 shall, in any manner, discriminate against or intimidate any
28 employee engaged in the performance of work under this contract
29 or any subcontract hereunder, or engaged in the procurement,
30 manufacture, assembling or furnishing of any such materials,
31 equipment, supplies or services to be acquired under such contract,
32 on account of race, creed, color, national origin, ancestry, marital
33 status, gender identity or expression, affectional or sexual
34 orientation or sex;

35 c. There may be deducted from the amount payable to the
36 contractor by the contracting public agency, under this contract, a
37 penalty of \$50.00 for each person for each calendar day during
38 which such person is discriminated against or intimidated in
39 violation of the provisions of the contract; and

40 d. This contract may be canceled or terminated by the
41 contracting public agency, and all money due or to become due
42 hereunder may be forfeited, for any violation of this section of the
43 contract occurring after notice to the contractor from the contracting

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 SJU committee amendments adopted November 13, 2006.

²Assembly floor amendments adopted December 14, 2006.

1 public agency of any prior violation of this section of the contract.

2 No provision in this section shall be construed to prevent a board
3 of education from designating that a contract, subcontract or other
4 means of procurement of goods, services, equipment or construction
5 shall be awarded to a small business enterprise, minority business
6 enterprise or a women's business enterprise pursuant to P.L.1985,
7 c.490 (C.18A:18A-51 et seq.).
8 (cf: P.L.1991, c.519, s.10)
9

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

12 3. The Legislature finds and declares that practices of
13 discrimination against any of its inhabitants, because of race, creed,
14 color, national origin, ancestry, age, sex, gender identity or
15 expression, affectional or sexual orientation, marital status, familial
16 status, liability for service in the Armed Forces of the United States,
17 disability or nationality, are matters of concern to the government
18 of the State, and that such discrimination threatens not only the
19 rights and proper privileges of the inhabitants of the State but
20 menaces the institutions and foundation of a free democratic State;
21 provided, however, that nothing in this expression of policy
22 prevents the making of legitimate distinctions between citizens and
23 aliens when required by federal law or otherwise necessary to
24 promote the national interest.

25 The Legislature further declares its opposition to such practices
26 of discrimination when directed against any person by reason of the
27 race, creed, color, national origin, ancestry, age, sex, gender
28 identity or expression, affectional or sexual orientation, marital
29 status, liability for service in the Armed Forces of the United States,
30 disability or nationality of that person or that person's spouse,
31 partners, members, stockholders, directors, officers, managers,
32 superintendents, agents, employees, business associates, suppliers,
33 or customers, in order that the economic prosperity and general
34 welfare of the inhabitants of the State may be protected and
35 ensured.

36 The Legislature further finds that because of discrimination,
37 people suffer personal hardships, and the State suffers a grievous
38 harm. The personal hardships include: economic loss; time loss;
39 physical and emotional stress; and in some cases severe emotional
40 trauma, illness, homelessness or other irreparable harm resulting
41 from the strain of employment controversies; relocation, search and
42 moving difficulties; anxiety caused by lack of information,
43 uncertainty, and resultant planning difficulty; career, education,
44 family and social disruption; and adjustment problems, which
45 particularly impact on those protected by this act. Such harms
46 have, under the common law, given rise to legal remedies, including
47 compensatory and punitive damages. The Legislature intends that
48 such damages be available to all persons protected by this act and

1 that this act shall be liberally construed in combination with other
2 protections available under the laws of this State.

3 (cf: P.L.2003, c.180, s.3)

4

5 3. Section 4 of P.L.1945, c.169 (C.10:5-4) is amended to read as
6 follows:

7 4. All persons shall have the opportunity to obtain employment,
8 and to obtain all the accommodations, advantages, facilities, and
9 privileges of any place of public accommodation, publicly assisted
10 housing accommodation, and other real property without
11 discrimination because of race, creed, color, national origin,
12 ancestry, age, marital status, affectional or sexual orientation,
13 familial status, disability, nationality, sex, gender identity or
14 expression or source of lawful income used for rental or mortgage
15 payments, subject only to conditions and limitations applicable
16 alike to all persons. This opportunity is recognized as and declared
17 to be a civil right.

18 (cf: P.L.2003, c.180, s.4)

19

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

22 5. As used in this act, unless a different meaning clearly appears
23 from the context:

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

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

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

35 d. "Unlawful employment practice" and "unlawful
36 discrimination" include only those unlawful practices and acts
37 specified in section 11 of this act.

38 e. "Employer" includes all persons as defined in subsection a. of
39 this section unless otherwise specifically exempt under another
40 section of this act, and includes the State, any political or civil
41 subdivision thereof, and all public officers, agencies, boards or
42 bodies.

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

45 g. "Liability for service in the Armed Forces of the United
46 States" means subject to being ordered as an individual or member
47 of an organized unit into active service in the Armed Forces of the
48 United States by reason of membership in the National Guard, naval

- 1 militia or a reserve component of the Armed Forces of the United
2 States, or subject to being inducted into such armed forces through
3 a system of national selective service.
- 4 h. "Division" means the "Division on Civil Rights" created by
5 this act.
- 6 i. "Attorney General" means the Attorney General of the State of
7 New Jersey or his representative or designee.
- 8 j. "Commission" means the Commission on Civil Rights created
9 by this act.
- 10 k. "Director" means the Director of the Division on Civil Rights.
- 11 l. "A place of public accommodation" shall include, but not be
12 limited to: any tavern, road house, hotel, motel, trailer camp,
13 summer camp, day camp, or resort camp, whether for entertainment
14 of transient guests or accommodation of those seeking health,
15 recreation or rest; any producer, manufacturer, wholesaler,
16 distributor, retail shop, store, establishment, or concession dealing
17 with goods or services of any kind; any restaurant, eating house, or
18 place where food is sold for consumption on the premises; any
19 place maintained for the sale of ice cream, ice and fruit preparations
20 or their derivatives, soda water or confections, or where any
21 beverages of any kind are retailed for consumption on the premises;
22 any garage, any public conveyance operated on land or water, or in
23 the air, any stations and terminals thereof; any bathhouse,
24 boardwalk, or seashore accommodation; any auditorium, meeting
25 place, or hall; any theater, motion-picture house, music hall, roof
26 garden, skating rink, swimming pool, amusement and recreation
27 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
28 pool parlor, or other place of amusement; any comfort station; any
29 dispensary, clinic or hospital; any public library; any kindergarten,
30 primary and secondary school, trade or business school, high
31 school, academy, college and university, or any educational
32 institution under the supervision of the State Board of Education, or
33 the Commissioner of Education of the State of New Jersey.
34 Nothing herein contained shall be construed to include or to apply
35 to any institution, bona fide club, or place of accommodation, which
36 is in its nature distinctly private; nor shall anything herein contained
37 apply to any educational facility operated or maintained by a bona
38 fide religious or sectarian institution, and the right of a natural
39 parent or one in loco parentis to direct the education and upbringing
40 of a child under his control is hereby affirmed; nor shall anything
41 herein contained be construed to bar any private secondary or post
42 secondary school from using in good faith criteria other than race,
43 creed, color, national origin, ancestry, gender identity or expression
44 or affectional or sexual orientation in the admission of students.
- 45 m. "A publicly assisted housing accommodation" shall include
46 all housing built with public funds or public assistance pursuant to
47 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
48 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,

1 c.184, and all housing financed in whole or in part by a loan,
2 whether or not secured by a mortgage, the repayment of which is
3 guaranteed or insured by the federal government or any agency
4 thereof.

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

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

48 p. "Real estate salesperson" includes any person who, for

1 compensation, valuable consideration or commission, or other thing
2 of value, or by reason of a promise or reasonable expectation
3 thereof, is employed by and operates under the supervision of a
4 licensed real estate broker to sell or offer to sell, buy or offer to buy
5 or negotiate the purchase, sale or exchange of real estate, or offers
6 or attempts to negotiate a loan secured or to be secured by a
7 mortgage or other encumbrance upon or transfer of real estate, or to
8 lease or rent, or offer to lease or rent any real estate for others, or to
9 collect rents for the use of real estate, or to solicit for prospective
10 purchasers or lessees of real estate, or who is employed by a
11 licensed real estate broker to sell or offer to sell lots or other parcels
12 of real estate, at a stated salary, or upon a commission, or upon a
13 salary and commission, or otherwise to sell real estate, or any parts
14 thereof, in lots or other parcels.

15 q. "Disability" means physical disability, infirmity, malformation
16 or disfigurement which is caused by bodily injury, birth defect or
17 illness including epilepsy and other seizure disorders, and which
18 shall include, but not be limited to, any degree of paralysis,
19 amputation, lack of physical coordination, blindness or visual
20 impediment, deafness or hearing impediment, muteness or speech
21 impediment or physical reliance on a service or guide dog,
22 wheelchair, or other remedial appliance or device, or any mental,
23 psychological or developmental disability resulting from
24 anatomical, psychological, physiological or neurological conditions
25 which prevents the normal exercise of any bodily or mental
26 functions or is demonstrable, medically or psychologically, by
27 accepted clinical or laboratory diagnostic techniques. Disability
28 shall also mean AIDS or HIV infection.

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

34 s. "Guide dog" means a dog used to assist deaf persons or which
35 is fitted with a special harness so as to be suitable as an aid to the
36 mobility of a blind person, and is used by a blind person who has
37 satisfactorily completed a specific course of training in the use of
38 such a dog, and has been trained by an organization generally
39 recognized by agencies involved in the rehabilitation of the blind or
40 deaf as reputable and competent to provide dogs with training of
41 this type.

42 t. "Guide or service dog trainer" means any person who is
43 employed by an organization generally recognized by agencies
44 involved in the rehabilitation of persons with disabilities as
45 reputable and competent to provide dogs with training, and who is
46 actually involved in the training process.

47 u. "Housing accommodation" means any publicly assisted
48 housing accommodation or any real property, or portion thereof,

- 1 which is used or occupied, or is intended, arranged, or designed to
2 be used or occupied, as the home, residence or sleeping place of one
3 or more persons, but shall not include any single family residence
4 the occupants of which rent, lease, or furnish for compensation not
5 more than one room therein.
- 6 v. "Public facility" means any place of public accommodation
7 and any street, highway, sidewalk, walkway, public building, and
8 any other place or structure to which the general public is regularly,
9 normally or customarily permitted or invited.
- 10 w. "Deaf person" means any person whose hearing is so
11 severely impaired that the person is unable to hear and understand
12 normal conversational speech through the unaided ear alone, and
13 who must depend primarily on a supportive device or visual
14 communication such as writing, lip reading, sign language, and
15 gestures.
- 16 x. "Atypical hereditary cellular or blood trait" means sickle cell
17 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
18 fibrosis trait.
- 19 y. "Sickle cell trait" means the condition wherein the major
20 natural hemoglobin components present in the blood of the
21 individual are hemoglobin A (normal) and hemoglobin S (sickle
22 hemoglobin) as defined by standard chemical and physical analytic
23 techniques, including electrophoresis; and the proportion of
24 hemoglobin A is greater than the proportion of hemoglobin S or one
25 natural parent of the individual is shown to have only normal
26 hemoglobin components (hemoglobin A, hemoglobin A2,
27 hemoglobin F) in the normal proportions by standard chemical and
28 physical analytic tests.
- 29 z. "Hemoglobin C trait" means the condition wherein the major
30 natural hemoglobin components present in the blood of the
31 individual are hemoglobin A (normal) and hemoglobin C as defined
32 by standard chemical and physical analytic techniques, including
33 electrophoresis; and the proportion of hemoglobin A is greater than
34 the proportion of hemoglobin C or one natural parent of the
35 individual is shown to have only normal hemoglobin components
36 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
37 proportions by standard chemical and physical analytic tests.
- 38 aa. "Thalassemia trait" means the presence of the thalassemia
39 gene which in combination with another similar gene results in the
40 chronic hereditary disease Cooley's anemia.
- 41 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
42 which in combination with another similar gene results in the
43 chronic hereditary disease Tay-Sachs.
- 44 cc. "Cystic fibrosis trait" means the presence of the cystic
45 fibrosis gene which in combination with another similar gene
46 results in the chronic hereditary disease cystic fibrosis.
- 47 dd. "Service dog" means any dog individually trained to the
48 requirements of a person with a disability including, but not limited

1 to minimal protection work, rescue work, pulling a wheelchair or
2 retrieving dropped items. This term shall include a "seizure dog"
3 trained to alert or otherwise assist persons subject to epilepsy or
4 other seizure disorders.

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

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

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

13 hh. "Affectional or sexual orientation" means male or female
14 heterosexuality, homosexuality or bisexuality by inclination,
15 practice, identity or expression, having a history thereof or being
16 perceived, presumed or identified by others as having such an
17 orientation.

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

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

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

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

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

35 (1) provided under any State program that the Attorney General
36 determines is specifically designed and operated to assist elderly
37 persons (as defined in the State program); or provided under any
38 federal program that the United States Department of Housing and
39 Urban Development determines is specifically designed and
40 operated to assist elderly persons (as defined in the federal
41 program); or

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

44 (3) intended and operated for occupancy by at least one person
45 55 years of age or older per unit. In determining whether housing
46 qualifies as housing for older persons under this subsection, the
47 Attorney General shall adopt regulations which require at least the
48 following factors:

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

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

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

11 Housing shall not fail to meet the requirements for housing for
 12 older persons by reason of: persons residing in such housing as of
 13 September 13, 1988 not meeting the age requirements of this
 14 subsection, provided that new occupants of such housing meet the
 15 age requirements of this subsection; or unoccupied units, provided
 16 that such units are reserved for occupancy by persons who meet the
 17 age requirements of this subsection.

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

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

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

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

33 rr. "Gender identity or expression" means having or being
 34 perceived as having a gender related identity or expression whether
 35 or not stereotypically associated with a person's assigned sex at
 36 birth. ²["Gender identity or expression" includes transgender
 37 status. ¹]"²

38 (cf: P.L.2004, c.130, s.37)

39
 40 5. Section 6 of P.L.1945, c.169 (C.10:5-6) is amended to read as
 41 follows:

42 6. There is created in the Department of Law and Public Safety a
 43 division known as "The Division on Civil Rights" with power to
 44 prevent and eliminate discrimination in the manner prohibited by
 45 this act against persons because of race, creed, color, national
 46 origin, ancestry, age, marital status, affectional or sexual
 47 orientation, gender identity or expression, familial status,
 48 nationality, disability, or sex or because of their liability for service

1 in the Armed Forces of the United States, by employers, labor
2 organizations, employment agencies or other persons and to take
3 other actions against discrimination because of race, creed, color,
4 national origin, ancestry, marital status, sex, familial status,
5 nationality, disability, or age or because of their liability for service
6 in the Armed Forces of the United States, as herein provided; and
7 the division created hereunder is given general jurisdiction and
8 authority for such purposes.

9 (cf: P.L.2003, c.180, s.7)

10

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

13 8. The Attorney General shall:

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

16 b. Administer the work of the division.

17 c. Organize the division into sections, which shall include but
18 not be limited to a section which shall receive, investigate, and act
19 upon complaints alleging discrimination against persons because of
20 race, creed, color, national origin, ancestry, age, marital status,
21 affectional or sexual orientation, gender identity or expression,
22 familial status, disability, nationality or sex or because of their
23 liability for service in the Armed Forces of the United States; and
24 another which shall, in order to eliminate prejudice and to further
25 good will among the various racial and religious and nationality
26 groups in this State, study, recommend, prepare and implement, in
27 cooperation with such other departments of the State Government
28 or any other agencies, groups or entities both public and private,
29 such educational and human relations programs as are consonant
30 with the objectives of this act; and prescribe the organization of said
31 sections and the duties of his subordinates and assistants.

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

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

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

48 g. Adopt, promulgate, amend, and rescind suitable rules and

1 regulations to carry out the provisions of this act.

2 h. Conduct investigations, receive complaints and conduct
3 hearings thereon other than those complaints received and hearings
4 held pursuant to the provisions of this act.

5 i. In connection with any investigation or hearing held pursuant
6 to the provisions of this act, subpoena witnesses, compel their
7 attendance, administer oaths, take the testimony of any person,
8 under oath, and, in connection therewith, require the production for
9 examination of any books or papers relating to any subject matter
10 under investigation or in question by the division and conduct such
11 discovery procedures which may include the taking of
12 interrogatories and oral depositions as shall be deemed necessary by
13 the Attorney General in any investigation. The Attorney General
14 may make rules as to the issuance of subpoenas by the director.
15 The failure of any witness when duly subpoenaed to attend, give
16 testimony, or produce evidence shall be punishable by the Superior
17 Court of New Jersey in the same manner as such failure is
18 punishable by such court in a case therein pending.

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

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

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

37 (cf: P.L.2003, c.180, s.8)

38

39 7. Section 1 of P.L.1954, c.198 (C.10:5-9.1) is amended to read
40 as follows:

41 1. The Division on Civil Rights in the Department of Law and
42 Public Safety shall enforce the laws of this State against
43 discrimination in housing built with, or leased with the assistance
44 of, public funds or public assistance, pursuant to any law, and in
45 real property, as defined in the law hereby supplemented, because
46 of race, religious principles, color, national origin, ancestry, marital
47 status, affectional or sexual orientation, familial status, disability,
48 nationality, sex, gender identity or expression or source of lawful

1 income used for rental or mortgage payments. The said laws shall
2 be so enforced in the manner prescribed in the act to which this act
3 is a supplement.

4 (cf: P.L.2003, c.180, s.9)

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

8 9. The commission shall:

9 a. Consult with and advise the Attorney General with respect to
10 the work of the division.

11 b. Survey and study the operations of the division.

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

15 The mayors or chief executive officers of the municipalities in
16 the State may appoint local commissions on civil rights to aid in
17 effectuating the purposes of this act. Such local commissions shall
18 be composed of representative citizens serving without
19 compensation. Such commissions shall attempt to foster through
20 community effort or otherwise, good will, cooperation and
21 conciliation among the groups and elements of the inhabitants of
22 the community, and they may be empowered by the local governing
23 bodies to make recommendations to them for the development of
24 policies and procedures in general and for programs of formal and
25 informal education that will aid in eliminating all types of
26 discrimination based on race, creed, color, national origin, ancestry,
27 age, marital status, affectional or sexual orientation, gender identity
28 or expression, familial status, disability, nationality or sex.

29 (cf: P.L.2003, c.180, s.11)

30
31 9. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to read
32 as follows:

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

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

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

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

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

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

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

9 c. For any employer or employment agency to print or circulate
10 or cause to be printed or circulated any statement, advertisement or
11 publication, or to use any form of application for employment, or to
12 make an inquiry in connection with prospective employment, which
13 expresses, directly or indirectly, any limitation, specification or
14 discrimination as to race, creed, color, national origin, ancestry,
15 age, marital status, domestic partnership status, affectional or sexual
16 orientation, gender identity or expression, disability, nationality or
17 sex or liability of any applicant for employment for service in the
18 Armed Forces of the United States, or any intent to make any such
19 limitation, specification or discrimination, unless based upon a bona
20 fide occupational 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, superintendent,
33 agent, or employee of any place of public accommodation directly
34 or indirectly to refuse, withhold from or deny to any person any of
35 the accommodations, advantages, facilities or privileges thereof, or
36 to discriminate against any person in the furnishing thereof, or
37 directly or indirectly to publish, circulate, issue, display, post or
38 mail any written or printed communication, notice, or advertisement
39 to the effect that any of the accommodations, advantages, facilities,
40 or privileges of any such place will be refused, withheld from, or
41 denied to any person on account of the race, creed, color, national
42 origin, ancestry, marital status, domestic partnership status, sex,
43 gender identity or expression, affectional or sexual orientation,
44 disability or nationality of such person, or that the patronage or
45 custom thereof of any person of any particular race, creed, color,
46 national origin, ancestry, marital status, domestic partnership status,
47 sex, gender identity or expression, affectional or sexual orientation,

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

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

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

42 g. For any person, including but not limited to, any owner,
43 lessee, sublessee, assignee or managing agent of, or other person
44 having the right of ownership or possession of or the right to sell,
45 rent, lease, assign, or sublease any real property or part or portion
46 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, domestic partnership status,
5 sex, gender identity or expression, affectional or sexual orientation,
6 familial status, disability, nationality, or source of lawful income
7 used for rental or mortgage payments;

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

16 (3) To print, publish, circulate, issue, display, post or mail, or
17 cause to be printed, published, circulated, issued, displayed, posted
18 or mailed any statement, advertisement, publication or sign, or to
19 use any form of application for the purchase, rental, lease,
20 assignment or sublease of any real property or part or portion
21 thereof, or to make any record or inquiry in connection with the
22 prospective purchase, rental, lease, assignment, or sublease of any
23 real property, or part or portion thereof which expresses, directly or
24 indirectly, any limitation, specification or discrimination as to race,
25 creed, color, national origin, ancestry, marital status, domestic
26 partnership status, sex, gender identity or expression, affectional or
27 sexual orientation, familial status, disability, nationality, or source
28 of lawful income used for rental or mortgage payments, or any
29 intent to make any such limitation, specification or discrimination,
30 and the production of any such statement, advertisement, publicity,
31 sign, form of application, record, or inquiry purporting to be made
32 by any such person shall be presumptive evidence in any action that
33 the same was authorized by such person; provided, however, that
34 nothing contained in this subsection shall be construed to bar any
35 person from refusing to sell, rent, lease, assign or sublease or from
36 advertising or recording a qualification as to sex for any room,
37 apartment, flat in a dwelling or residential facility which is planned
38 exclusively for and occupied by individuals of one sex to any
39 individual of the exclusively opposite sex on the basis of sex ¹,
40 provided individuals shall be qualified based on their gender
41 identity or expression¹;

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

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

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

1 or source of lawful income used for rental or mortgage payments or
2 any intent to make any such limitation, specification or
3 discrimination, and the production of any such statement,
4 advertisement, publicity, sign, form of application, record, or
5 inquiry purporting to be made by any such person shall be
6 presumptive evidence in any action that the same was authorized by
7 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 ¹, provided individuals shall be
14 qualified based on their gender identity or expression¹;

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, domestic partnership status, sex, gender identity or
38 expression, affectional or sexual orientation, disability, familial
39 status or nationality, in the granting, withholding, extending,
40 modifying, renewing, or purchasing, or in the fixing of the rates,
41 terms, conditions or provisions of any such loan, extension of credit
42 or financial assistance or purchase thereof or in the extension of
43 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

1 limitation, specification or discrimination as to race, creed, color,
2 national origin, ancestry, marital status, domestic partnership status,
3 sex, gender identity or expression, affectional or sexual orientation,
4 disability, familial status or nationality or any intent to make any
5 such limitation, specification or discrimination; unless otherwise
6 required by law or regulation to 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 scope
20 of this act to refuse to post or display such notices concerning the
21 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 employee
24 or agent thereof or any other individual, corporation, partnership, or
25 organization, for the purpose of inducing a transaction for the sale
26 or rental of real property from which transaction such person or any
27 of its members may benefit financially, to represent that a change
28 has occurred or will or may occur in the composition with respect to
29 race, creed, color, national origin, ancestry, marital status, domestic
30 partnership status, familial status, sex, gender identity or
31 expression, affectional or sexual orientation, disability, nationality,
32 or source of lawful income used for rental or mortgage payments of
33 the owners or occupants in the block, neighborhood or area in
34 which the real property is located, and to represent, directly or
35 indirectly, that this change will or may result in undesirable
36 consequences in the block, neighborhood or area in which the real
37 property is located, including, but not limited to the lowering of
38 property values, an increase in criminal or anti-social behavior, or a
39 decline in the quality of schools or other facilities.

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

1 payments of such other person or of such other person's spouse,
2 partners, members, stockholders, directors, officers, managers,
3 superintendents, agents, employees, business associates, suppliers,
4 or customers. This subsection shall not prohibit refusals or other
5 actions (1) pertaining to employee-employer collective bargaining,
6 labor disputes, or unfair labor practices, or (2) made or taken in
7 connection with a protest of unlawful discrimination or unlawful
8 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, sex, gender identity or expression,
17 affectional or sexual orientation, marital status, domestic
18 partnership status, disability, liability for service in the Armed
19 Forces of the United States, or nationality of such other person or of
20 such other person's spouse, partners, members, stockholders,
21 directors, officers, managers, superintendents, agents, employees,
22 business associates, suppliers, or customers.

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

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

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

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

45 (2) Boycotting, commercially blacklisting or refusing to buy
46 from, sell to, lease from or to, license, contract with, provide goods,
47 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, domestic
14 partnership status, familial status, sex, gender identity or
15 expression, affectional or sexual orientation, disability or
16 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.'¹

23 (cf: P.L.2003, c.246, s.12)

24
25 10. Section 12 of P.L.1992, c.146 (C.10:5-12.5) is amended to
26 read as follows:

27 12. a. It shall be an unlawful discrimination for a municipality,
28 county or other local civil or political subdivision of the State of
29 New Jersey, or an officer, employee, or agent thereof, to exercise
30 the power to regulate land use or housing in a manner that
31 discriminates on the basis of race, creed, color, national origin,
32 ancestry, marital status, familial status, sex, gender identity or
33 expression, nationality or disability.

34 b. Notwithstanding the provisions of section 12 of P.L.1945,
35 c.169 (C.10:5-13) any person claiming to be aggrieved by an
36 unlawful discrimination under this section shall enforce this section
37 by private right of action in Superior Court. This section shall not
38 apply to discrimination in housing owned or managed by a
39 municipality, county or other local civil or political subdivision of
40 the State of New Jersey where such discrimination is otherwise
41 prohibited by section 11 of P.L.1945, c.169 (C.10:5-12).

42 (cf: P.L.2003, c.180, s.13)

43
44 11. Section 26 of P.L.1945, c.169 (C.10:5-27) is amended to
45 read as follows:

46 26. The provisions of this act shall be construed fairly and justly
47 with due regard to the interests of all parties. Nothing contained in

1 this act shall be deemed to repeal any of the provisions of the Civil
2 Rights Law or of any other law of this State relating to
3 discrimination because of race, creed, color, national origin,
4 ancestry, marital status, affectional or sexual orientation, disability,
5 gender identity or expression, nationality or sex or liability for
6 service in the Armed Forces of the United States; except that, as to
7 practices and acts declared unlawful by section 11 of this act, the
8 procedure herein provided shall, while pending, be exclusive; and
9 the final determination therein shall exclude any other action, civil
10 or criminal, based on the same grievance of the individual
11 concerned. Nothing herein contained shall bar, exclude or otherwise
12 affect any right or action, civil or criminal, which may exist
13 independently of any right to redress against or specific relief from
14 any unlawful employment practice or unlawful discrimination.
15 With respect only to affectional or sexual orientation and gender
16 identity or expression, nothing contained herein shall be construed
17 to require the imposition of affirmative action, plans or quotas as
18 specific relief from an unlawful employment practice or unlawful
19 discrimination.

20 (cf: P.L.2003, c.180, s.17)

21

22 12. Section 1 of P.L.1975, c.127 (C.10:5-31) is amended to read
23 as follows:

24 1. As used in this act:

25 a. "Public works contract" means any contract to be performed
26 for or on behalf of the State or any county or municipality or other
27 political subdivision of the State, or any agency or authority created
28 by any of the foregoing, for the construction, alteration or repair of
29 any building or public work or for the acquisition of materials,
30 equipment, supplies or services with respect to which
31 discrimination in the hiring of persons for the performance of work
32 thereunder or under any subcontract thereunder by reason of race,
33 creed, color, national origin, ancestry, marital status, affectional or
34 sexual orientation, nationality, gender identity or expression,
35 disability or sex is prohibited under R.S.10:2-1.

36 b. "Equal employment opportunity" means equality in
37 opportunity for employment by any contractor, subcontractor or
38 business firm engaged in the carrying out of a public works project
39 including its development, design, acquisition, construction,
40 management and operation.

41 (cf: P.L.2003, c.180, s.24)

42

43 13. Section 2 of P.L.1975, c.127 (C.10:5-32) is amended to read
44 as follow:

45 2. No public works contract shall be awarded by the State, a
46 county, municipality or other political subdivision of the State, or
47 any agency of or authority created by any of the foregoing, nor shall
48 any moneys be paid thereunder to any contractor, subcontractor or

1 business firm which has not agreed and guaranteed to afford equal
2 opportunity in performance of the contract and, except with respect
3 to affectional or sexual orientation, and gender identity or
4 expression, in accordance with an affirmative action program
5 approved by the State Treasurer.
6 (cf: P.L.1991, c.519, s.12)
7

8 14. Section 3 of P.L.1975, c.127 (C.10:5-33) is amended to read
9 as follows:

10 3. The State or any county or municipality or other political
11 subdivision of the State, or any agency of or authority created by
12 any of the foregoing, shall include in the bid specifications and the
13 contract provisions of any public works contract the following
14 language:

15 "During the performance of this contract, the contractor agrees as
16 follows:

17 a. The contractor or subcontractor, where applicable, will not
18 discriminate against any employee or applicant for employment
19 because of age, race, creed, color, national origin, ancestry, marital
20 status, affectional or sexual orientation, gender identity or
21 expression, disability, nationality or sex. Except with respect to
22 affectional or sexual orientation and gender identity or expression,
23 the contractor will take affirmative action to ensure that such
24 applicants are recruited and employed, and that employees are
25 treated during employment, without regard to their age, race, creed,
26 color, national origin, ancestry, marital status, affectional or sexual
27 orientation, gender identity or expression, disability, nationality or
28 sex. Such action shall include, but not be limited to the following:
29 employment, upgrading, demotion, or transfer; recruitment or
30 recruitment advertising; layoff or termination; rates of pay or other
31 forms of compensation; and selection for training, including
32 apprenticeship. The contractor agrees to post in conspicuous
33 places, available to employees and applicants for employment,
34 notices to be provided by the contracting officer setting forth the
35 provisions of this nondiscrimination clause;

36 b. The contractor or subcontractor, where applicable will, in all
37 solicitations or advertisements for employees placed by or on behalf
38 of the contractor, state that all qualified applicants will receive
39 consideration for employment without regard to age, race, creed,
40 color, national origin, ancestry, marital status, affectional or sexual
41 orientation, gender identity or expression, disability, nationality or
42 sex;

43 c. The contractor or subcontractor where applicable, will send to
44 each labor union or representative of workers with which he has a
45 collective bargaining agreement or other contract or understanding,
46 a notice, to be provided by the agency contracting officer, advising
47 the labor union or workers' representative of the contractor's
48 commitments under this act and shall post copies of the notice in

1 conspicuous places available to employees and applicants for
2 employment."

3 In soliciting bids for any public works contract the State or any
4 county or municipality or other political subdivision of the State, or
5 any agency of or authority created by any of the foregoing, shall
6 include in the advertisement and solicitation of bids the following
7 language: "Bidders are required to comply with the requirements of
8 P.L.1975, c.127."

9 (cf: P.L.2003, c.180, s.25)

10

11 15. Section 4 of P.L.1975, c.127 (C.10:5-34) is amended to read
12 as follows:

13 4. Each prospective bidder on a public works contract or
14 contracts and each subcontract bidder to a prime contract bidder
15 shall formulate and submit to the State Treasurer his or its
16 affirmative action program of equal opportunity whereby he or it
17 guarantees minorities employment in all employment categories;
18 the submission shall be accompanied by a fee in an amount to be
19 fixed by the State Treasurer. For the purposes of this section, equal
20 employment opportunity but not affirmative action is required with
21 respect to persons identified solely by their affectional or sexual
22 orientation and gender identity or expression. The State Treasurer
23 shall notify the bidder of approval or disapproval of his or its
24 program within 60 days of its submission; failure of the State
25 Treasurer to so act within 60 days shall constitute approval of the
26 program. Any existing federally approved or sanctioned affirmative
27 action program shall be approved by the State Treasurer.

28 No subcontract bidder who has less than five employees need
29 comply with the provisions of this section.

30 (cf: P.L.1991, c.519, s.14)

31

32 ¹[16. (New section) a. Nothing in P.L. , c. (C.)(now
33 pending before this Legislature as this bill) shall affect the ability of
34 an employer to require employees to adhere to reasonable
35 workplace appearance, grooming, and dress standards not precluded
36 by other provisions of State or federal law, provided that an
37 employer must allow an employee to appear, groom, and dress
38 consistently with the employee's gender identity or expression.

39 b. For the purposes of P.L. , c. (C.)(now pending before
40 this Legislature as this bill), a person shall be admitted to housing,
41 facilities and accommodations based on their gender identity or
42 expression, unless the Division of Civil Rights grants an
43 exemption.]¹

44

45 ¹[17.] 16.¹ This act shall take effect on the 180th day following
46 enactment.

1

2

3

Amends "Law against Discrimination" concerning gender

4

identity or expression discrimination.

SENATE, No. 362

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator ELLEN KARCHER

District 12 (Mercer and Monmouth)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

Senators Buono, Adler, Weinberg, Gill and Kenny

SYNOPSIS

Amends "Law against Discrimination" concerning gender identity or expression discrimination.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 7/31/2006)

S362 KARCHER, VITALE

2

1 AN ACT concerning the "Law against Discrimination" and
2 amending various parts of the statutory law 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. R.S.10:2-1 is amended to read as follows:

9 10:2-1. Antidiscrimination provisions. Every contract for or on
10 behalf of the State or any county or municipality or other political
11 subdivision of the State, or any agency of or authority created by
12 any of the foregoing, for the construction, alteration or repair of any
13 public building or public work or for the acquisition of materials,
14 equipment, supplies or services shall contain provisions by which
15 the contractor agrees that:

16 a. In the hiring of persons for the performance of work under
17 this contract or any subcontract hereunder, or for the procurement,
18 manufacture, assembling or furnishing of any such materials,
19 equipment, supplies or services to be acquired under this contract,
20 no contractor, nor any person acting on behalf of such contractor or
21 subcontractor, shall, by reason of race, creed, color, national origin,
22 ancestry, marital status, gender identity or expression, affectional or
23 sexual orientation or sex, discriminate against any person who is
24 qualified and available to perform the work to which the
25 employment relates;

26 b. No contractor, subcontractor, nor any person on his behalf
27 shall, in any manner, discriminate against or intimidate any
28 employee engaged in the performance of work under this contract
29 or any subcontract hereunder, or engaged in the procurement,
30 manufacture, assembling or furnishing of any such materials,
31 equipment, supplies or services to be acquired under such contract,
32 on account of race, creed, color, national origin, ancestry, marital
33 status, gender identity or expression, affectional or sexual
34 orientation or sex;

35 c. There may be deducted from the amount payable to the
36 contractor by the contracting public agency, under this contract, a
37 penalty of \$50.00 for each person for each calendar day during
38 which such person is discriminated against or intimidated in
39 violation of the provisions of the contract; and

40 d. This contract may be canceled or terminated by the
41 contracting public agency, and all money due or to become due
42 hereunder may be forfeited, for any violation of this section of the
43 contract occurring after notice to the contractor from the contracting
44 public agency of any prior violation of this section of the contract.

45 No provision in this section shall be construed to prevent a board

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 of education from designating that a contract, subcontract or other
2 means of procurement of goods, services, equipment or construction
3 shall be awarded to a small business enterprise, minority business
4 enterprise or a women's business enterprise pursuant to P.L.1985,
5 c.490 (C.18A:18A-51 et seq.).
6 (cf: P.L.1991, c.519, s.10)
7

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

10 3. The Legislature finds and declares that practices of
11 discrimination against any of its inhabitants, because of race, creed,
12 color, national origin, ancestry, age, sex, gender identity or
13 expression, affectional or sexual orientation, marital status, familial
14 status, liability for service in the Armed Forces of the United States,
15 disability or nationality, are matters of concern to the government
16 of the State, and that such discrimination threatens not only the
17 rights and proper privileges of the inhabitants of the State but
18 menaces the institutions and foundation of a free democratic State;
19 provided, however, that nothing in this expression of policy
20 prevents the making of legitimate distinctions between citizens and
21 aliens when required by federal law or otherwise necessary to
22 promote the national interest.

23 The Legislature further declares its opposition to such practices
24 of discrimination when directed against any person by reason of the
25 race, creed, color, national origin, ancestry, age, sex, gender
26 identity or expression, affectional or sexual orientation, marital
27 status, liability for service in the Armed Forces of the United States,
28 disability or nationality of that person or that person's spouse,
29 partners, members, stockholders, directors, officers, managers,
30 superintendents, agents, employees, business associates, suppliers,
31 or customers, in order that the economic prosperity and general
32 welfare of the inhabitants of the State may be protected and
33 ensured.

34 The Legislature further finds that because of discrimination,
35 people suffer personal hardships, and the State suffers a grievous
36 harm. The personal hardships include: economic loss; time loss;
37 physical and emotional stress; and in some cases severe emotional
38 trauma, illness, homelessness or other irreparable harm resulting
39 from the strain of employment controversies; relocation, search and
40 moving difficulties; anxiety caused by lack of information,
41 uncertainty, and resultant planning difficulty; career, education,
42 family and social disruption; and adjustment problems, which
43 particularly impact on those protected by this act. Such harms
44 have, under the common law, given rise to legal remedies, including
45 compensatory and punitive damages. The Legislature intends that
46 such damages be available to all persons protected by this act and
47 that this act shall be liberally construed in combination with other

1 protections available under the laws of this State.
2 (cf: P.L.2003, c.180, s.3)

3
4 3. Section 4 of P.L.1945, c.169 (C.10:5-4) is amended to read as
5 follows:

6 4. All persons shall have the opportunity to obtain employment,
7 and to obtain all the accommodations, advantages, facilities, and
8 privileges of any place of public accommodation, publicly assisted
9 housing accommodation, and other real property without
10 discrimination because of race, creed, color, national origin,
11 ancestry, age, marital status, affectional or sexual orientation,
12 familial status, disability, nationality, sex, gender identity or
13 expression or source of lawful income used for rental or mortgage
14 payments, subject only to conditions and limitations applicable
15 alike to all persons. This opportunity is recognized as and declared
16 to be a civil right.

17 (cf: P.L.2003, c.180, s.4)

18

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

21 5. As used in this act, unless a different meaning clearly appears
22 from the context:

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

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

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

34 d. "Unlawful employment practice" and "unlawful
35 discrimination" include only those unlawful practices and acts
36 specified in section 11 of this act.

37 e. "Employer" includes all persons as defined in subsection a. of
38 this section unless otherwise specifically exempt under another
39 section of this act, and includes the State, any political or civil
40 subdivision thereof, and all public officers, agencies, boards or
41 bodies.

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

44 g. "Liability for service in the Armed Forces of the United
45 States" means subject to being ordered as an individual or member
46 of an organized unit into active service in the Armed Forces of the
47 United States by reason of membership in the National Guard, naval
48 militia or a reserve component of the Armed Forces of the United

- 1 States, or subject to being inducted into such armed forces through
2 a system of national selective service.
- 3 h. "Division" means the "Division on Civil Rights" created by
4 this act.
- 5 i. "Attorney General" means the Attorney General of the State of
6 New Jersey or his representative or designee.
- 7 j. "Commission" means the Commission on Civil Rights created
8 by this act.
- 9 k. "Director" means the Director of the Division on Civil Rights.
- 10 l. "A place of public accommodation" shall include, but not be
11 limited to: any tavern, road house, hotel, motel, trailer camp,
12 summer camp, day camp, or resort camp, whether for entertainment
13 of transient guests or accommodation of those seeking health,
14 recreation or rest; any producer, manufacturer, wholesaler,
15 distributor, retail shop, store, establishment, or concession dealing
16 with goods or services of any kind; any restaurant, eating house, or
17 place where food is sold for consumption on the premises; any
18 place maintained for the sale of ice cream, ice and fruit preparations
19 or their derivatives, soda water or confections, or where any
20 beverages of any kind are retailed for consumption on the premises;
21 any garage, any public conveyance operated on land or water, or in
22 the air, any stations and terminals thereof; any bathhouse,
23 boardwalk, or seashore accommodation; any auditorium, meeting
24 place, or hall; any theater, motion-picture house, music hall, roof
25 garden, skating rink, swimming pool, amusement and recreation
26 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
27 pool parlor, or other place of amusement; any comfort station; any
28 dispensary, clinic or hospital; any public library; any kindergarten,
29 primary and secondary school, trade or business school, high
30 school, academy, college and university, or any educational
31 institution under the supervision of the State Board of Education, or
32 the Commissioner of Education of the State of New Jersey.
33 Nothing herein contained shall be construed to include or to apply
34 to any institution, bona fide club, or place of accommodation, which
35 is in its nature distinctly private; nor shall anything herein contained
36 apply to any educational facility operated or maintained by a bona
37 fide religious or sectarian institution, and the right of a natural
38 parent or one in loco parentis to direct the education and upbringing
39 of a child under his control is hereby affirmed; nor shall anything
40 herein contained be construed to bar any private secondary or post
41 secondary school from using in good faith criteria other than race,
42 creed, color, national origin, ancestry, gender identity or expression
43 or affectional or sexual orientation in the admission of students.
- 44 m. "A publicly assisted housing accommodation" shall include
45 all housing built with public funds or public assistance pursuant to
46 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
47 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
48 c.184, and all housing financed in whole or in part by a loan,

1 whether or not secured by a mortgage, the repayment of which is
2 guaranteed or insured by the federal government or any agency
3 thereof.

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

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

47 p. "Real estate salesperson" includes any person who, for
48 compensation, valuable consideration or commission, or other thing

1 of value, or by reason of a promise or reasonable expectation
2 thereof, is employed by and operates under the supervision of a
3 licensed real estate broker to sell or offer to sell, buy or offer to buy
4 or negotiate the purchase, sale or exchange of real estate, or offers
5 or attempts to negotiate a loan secured or to be secured by a
6 mortgage or other encumbrance upon or transfer of real estate, or to
7 lease or rent, or offer to lease or rent any real estate for others, or to
8 collect rents for the use of real estate, or to solicit for prospective
9 purchasers or lessees of real estate, or who is employed by a
10 licensed real estate broker to sell or offer to sell lots or other parcels
11 of real estate, at a stated salary, or upon a commission, or upon a
12 salary and commission, or otherwise to sell real estate, or any parts
13 thereof, in lots or other parcels.

14 q. "Disability" means physical disability, infirmity,
15 malformation or disfigurement which is caused by bodily injury,
16 birth defect or illness including epilepsy and other seizure
17 disorders, and which shall include, but not be limited to, any degree
18 of paralysis, amputation, lack of physical coordination, blindness or
19 visual impediment, deafness or hearing impediment, muteness or
20 speech impediment or physical reliance on a service or guide dog,
21 wheelchair, or other remedial appliance or device, or any mental,
22 psychological or developmental disability resulting from
23 anatomical, psychological, physiological or neurological conditions
24 which prevents the normal exercise of any bodily or mental
25 functions or is demonstrable, medically or psychologically, by
26 accepted clinical or laboratory diagnostic techniques. Disability
27 shall also mean AIDS or HIV infection.

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

33 s. "Guide dog" means a dog used to assist deaf persons or which
34 is fitted with a special harness so as to be suitable as an aid to the
35 mobility of a blind person, and is used by a blind person who has
36 satisfactorily completed a specific course of training in the use of
37 such a dog, and has been trained by an organization generally
38 recognized by agencies involved in the rehabilitation of the blind or
39 deaf as reputable and competent to provide dogs with training of
40 this type.

41 t. "Guide or service dog trainer" means any person who is
42 employed by an organization generally recognized by agencies
43 involved in the rehabilitation of persons with disabilities as
44 reputable and competent to provide dogs with training, and who is
45 actually involved in the training process.

46 u. "Housing accommodation" means any publicly assisted
47 housing accommodation or any real property, or portion thereof,
48 which is used or occupied, or is intended, arranged, or designed to

- 1 be used or occupied, as the home, residence or sleeping place of one
2 or more persons, but shall not include any single family residence
3 the occupants of which rent, lease, or furnish for compensation not
4 more than one room therein.
- 5 v. "Public facility" means any place of public accommodation
6 and any street, highway, sidewalk, walkway, public building, and
7 any other place or structure to which the general public is regularly,
8 normally or customarily permitted or invited.
- 9 w. "Deaf person" means any person whose hearing is so
10 severely impaired that the person is unable to hear and understand
11 normal conversational speech through the unaided ear alone, and
12 who must depend primarily on a supportive device or visual
13 communication such as writing, lip reading, sign language, and
14 gestures.
- 15 x. "Atypical hereditary cellular or blood trait" means sickle cell
16 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
17 fibrosis trait.
- 18 y. "Sickle cell trait" means the condition wherein the major
19 natural hemoglobin components present in the blood of the
20 individual are hemoglobin A (normal) and hemoglobin S (sickle
21 hemoglobin) as defined by standard chemical and physical analytic
22 techniques, including electrophoresis; and the proportion of
23 hemoglobin A is greater than the proportion of hemoglobin S or one
24 natural parent of the individual is shown to have only normal
25 hemoglobin components (hemoglobin A, hemoglobin A2,
26 hemoglobin F) in the normal proportions by standard chemical and
27 physical analytic tests.
- 28 z. "Hemoglobin C trait" means the condition wherein the major
29 natural hemoglobin components present in the blood of the
30 individual are hemoglobin A (normal) and hemoglobin C as defined
31 by standard chemical and physical analytic techniques, including
32 electrophoresis; and the proportion of hemoglobin A is greater than
33 the proportion of hemoglobin C or one natural parent of the
34 individual is shown to have only normal hemoglobin components
35 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
36 proportions by standard chemical and physical analytic tests.
- 37 aa. "Thalassemia trait" means the presence of the thalassemia
38 gene which in combination with another similar gene results in the
39 chronic hereditary disease Cooley's anemia.
- 40 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
41 which in combination with another similar gene results in the
42 chronic hereditary disease Tay-Sachs.
- 43 cc. "Cystic fibrosis trait" means the presence of the cystic
44 fibrosis gene which in combination with another similar gene
45 results in the chronic hereditary disease cystic fibrosis.
- 46 dd. "Service dog" means any dog individually trained to the
47 requirements of a person with a disability including, but not limited
48 to minimal protection work, rescue work, pulling a wheelchair or

- 1 retrieving dropped items. This term shall include a "seizure dog"
2 trained to alert or otherwise assist persons subject to epilepsy or
3 other seizure disorders.
- 4 ee. "Qualified Medicaid applicant" means an individual who is a
5 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).
- 6 ff. "AIDS" means acquired immune deficiency syndrome as
7 defined by the Centers for Disease Control and Prevention of the
8 United States Public Health Service.
- 9 gg. "HIV infection" means infection with the human
10 immunodeficiency virus or any other related virus identified as a
11 probable causative agent of AIDS.
- 12 hh. "Affectional or sexual orientation" means male or female
13 heterosexuality, homosexuality or bisexuality by inclination,
14 practice, identity or expression, having a history thereof or being
15 perceived, presumed or identified by others as having such an
16 orientation.
- 17 ii. "Heterosexuality" means affectional, emotional or physical
18 attraction or behavior which is primarily directed towards persons
19 of the other gender.
- 20 jj. "Homosexuality" means affectional, emotional or physical
21 attraction or behavior which is primarily directed towards persons
22 of the same gender.
- 23 kk. "Bisexuality" means affectional, emotional or physical
24 attraction or behavior which is directed towards persons of either
25 gender.
- 26 ll. "Familial status" means being the natural parent of a child,
27 the adoptive parent of a child, the resource family parent of a child,
28 having a "parent and child relationship" with a child as defined by
29 State law, or having sole or joint legal or physical custody, care,
30 guardianship, or visitation with a child, or any person who is
31 pregnant or is in the process of securing legal custody of any
32 individual who has not attained the age of 18 years.
- 33 mm. "Housing for older persons" means housing:
- 34 (1) provided under any State program that the Attorney General
35 determines is specifically designed and operated to assist elderly
36 persons (as defined in the State program); or provided under any
37 federal program that the United States Department of Housing and
38 Urban Development determines is specifically designed and
39 operated to assist elderly persons (as defined in the federal
40 program); or
- 41 (2) intended for, and solely occupied by persons 62 years of age
42 or older; or
- 43 (3) intended and operated for occupancy by at least one person
44 55 years of age or older per unit. In determining whether housing
45 qualifies as housing for older persons under this subsection, the
46 Attorney General shall adopt regulations which require at least the
47 following factors:
- 48 (a) the existence of significant facilities and services specifically

1 designed to meet the physical or social needs of older persons, or if
2 the provision of such facilities and services is not practicable, that
3 such housing is necessary to provide important housing
4 opportunities for older persons; and

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

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

10 Housing shall not fail to meet the requirements for housing for
11 older persons by reason of: persons residing in such housing as of
12 September 13, 1988 not meeting the age requirements of this
13 subsection, provided that new occupants of such housing meet the
14 age requirements of this subsection; or unoccupied units, provided
15 that such units are reserved for occupancy by persons who meet the
16 age requirements of this subsection.

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

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

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

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

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

36 (cf: P.L.2004, c.130, s.37)

37

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

40 6. There is created in the Department of Law and Public Safety a
41 division known as "The Division on Civil Rights" with power to
42 prevent and eliminate discrimination in the manner prohibited by
43 this act against persons because of race, creed, color, national
44 origin, ancestry, age, marital status, affectional or sexual
45 orientation, gender identity or expression, familial status,
46 nationality, disability, or sex or because of their liability for service
47 in the Armed Forces of the United States, by employers, labor
48 organizations, employment agencies or other persons and to take

1 other actions against discrimination because of race, creed, color,
2 national origin, ancestry, marital status, sex, familial status,
3 nationality, disability, or age or because of their liability for service
4 in the Armed Forces of the United States, as herein provided; and
5 the division created hereunder is given general jurisdiction and
6 authority for such purposes.

7 (cf: P.L.2003, c.180, s.7)

8

9 6. Section 8 of P.L.1945, c.169 (C.10:5-8) is amended to read as
10 follows:

11 8. The Attorney General shall:

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

14 b. Administer the work of the division.

15 c. Organize the division into sections, which shall include but
16 not be limited to a section which shall receive, investigate, and act
17 upon complaints alleging discrimination against persons because of
18 race, creed, color, national origin, ancestry, age, marital status,
19 affectional or sexual orientation, gender identity or expression,
20 familial status, disability, nationality or sex or because of their
21 liability for service in the Armed Forces of the United States; and
22 another which shall, in order to eliminate prejudice and to further
23 good will among the various racial and religious and nationality
24 groups in this State, study, recommend, prepare and implement, in
25 cooperation with such other departments of the State Government
26 or any other agencies, groups or entities both public and private,
27 such educational and human relations programs as are consonant
28 with the objectives of this act; and prescribe the organization of said
29 sections and the duties of his subordinates and assistants.

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

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

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

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

48 h. Conduct investigations, receive complaints and conduct

1 hearings thereon other than those complaints received and hearings
2 held pursuant to the provisions of this act.

3 i. In connection with any investigation or hearing held pursuant
4 to the provisions of this act, subpoena witnesses, compel their
5 attendance, administer oaths, take the testimony of any person,
6 under oath, and, in connection therewith, require the production for
7 examination of any books or papers relating to any subject matter
8 under investigation or in question by the division and conduct such
9 discovery procedures which may include the taking of
10 interrogatories and oral depositions as shall be deemed necessary by
11 the Attorney General in any investigation. The Attorney General
12 may make rules as to the issuance of subpoenas by the director.
13 The failure of any witness when duly subpoenaed to attend, give
14 testimony, or produce evidence shall be punishable by the Superior
15 Court of New Jersey in the same manner as such failure is
16 punishable by such court in a case therein pending.

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

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

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

35 (cf: P.L.2003, c.180, s.8)

36

37 7. Section 1 of P.L.1954, c.198 (C.10:5-9.1) is amended to read
38 as follows:

39 1. The Division on Civil Rights in the Department of Law and
40 Public Safety shall enforce the laws of this State against
41 discrimination in housing built with, or leased with the assistance
42 of, public funds or public assistance, pursuant to any law, and in
43 real property, as defined in the law hereby supplemented, because
44 of race, religious principles, color, national origin, ancestry, marital
45 status, affectional or sexual orientation, familial status, disability,
46 nationality, sex, gender identity or expression or source of lawful
47 income used for rental or mortgage payments. The said laws shall
48 be so enforced in the manner prescribed in the act to which this act

1 is a supplement.
2 (cf: P.L.2003, c.180, s.9)

3
4 8. Section 1 of P.L.1945, c.169 (C.10:5-10) is amended to read
5 as follows:

6 9. The commission shall:

7 a. Consult with and advise the Attorney General with respect to
8 the work of the division.

9 b. Survey and study the operations of the division.

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

13 The mayors or chief executive officers of the municipalities in
14 the State may appoint local commissions on civil rights to aid in
15 effectuating the purposes of this act. Such local commissions shall
16 be composed of representative citizens serving without
17 compensation. Such commissions shall attempt to foster through
18 community effort or otherwise, good will, cooperation and
19 conciliation among the groups and elements of the inhabitants of
20 the community, and they may be empowered by the local governing
21 bodies to make recommendations to them for the development of
22 policies and procedures in general and for programs of formal and
23 informal education that will aid in eliminating all types of
24 discrimination based on race, creed, color, national origin, ancestry,
25 age, marital status, affectional or sexual orientation, gender identity
26 or expression, familial status, disability, nationality or sex.

27 (cf: P.L.2003, c.180, s.11)

28
29 9. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to read
30 as follows:

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

33 a. For an employer, because of the race, creed, color, national
34 origin, ancestry, age, marital status, domestic partnership status,
35 affectional or sexual orientation, genetic information, sex, gender
36 identity or expression, disability or atypical hereditary cellular or
37 blood trait of any individual, or because of the liability for service
38 in the Armed Forces of the United States or the nationality of any
39 individual, or because of the refusal to submit to a genetic test or
40 make available the results of a genetic test to an employer, to refuse
41 to hire or employ or to bar or to discharge or require to retire, unless
42 justified by lawful considerations other than age, from employment
43 such individual or to discriminate against such individual in
44 compensation or in terms, conditions or privileges of employment;
45 provided, however, it shall not be an unlawful employment practice
46 to refuse to accept for employment an applicant who has received a
47 notice of induction or orders to report for active duty in the armed
48 forces; provided further that nothing herein contained shall be

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

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

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

38 b. For a labor organization, because of the race, creed, color,
39 national origin, ancestry, age, marital status, domestic partnership
40 status, affectional or sexual orientation, gender identity or
41 expression, disability or sex of any individual, or because of the
42 liability for service in the Armed Forces of the United States or
43 nationality of any individual, to exclude or to expel from its
44 membership such individual or to discriminate in any way against
45 any of its members, against any applicant for, or individual included
46 in, any apprentice or other training program or against any
47 employer or any individual employed by an employer; provided,
48 however, that nothing herein contained shall be construed to bar a

1 labor organization from excluding from its apprentice or other
2 training programs any person on the basis of sex in those certain
3 circumstances where sex is a bona fide occupational qualification
4 reasonably necessary to the normal operation of the particular
5 apprentice or other training program.

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

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

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

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

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

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

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

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

43 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
44 to deny to or withhold from any person or group of persons any real
45 property or part or portion thereof because of race, creed, color,
46 national origin, ancestry, marital status, domestic partnership status,
47 sex, gender identity or expression, affectional or sexual orientation,
48 familial status, disability, nationality, or source of lawful income

1 used for rental or mortgage payments;

2 (2) To discriminate against any person or group of persons
3 because of race, creed, color, national origin, ancestry, marital
4 status, domestic partnership status, sex, gender identity or
5 expression, affectional or sexual orientation, familial status,
6 disability, nationality or source of lawful income used for rental or
7 mortgage payments in the terms, conditions or privileges of the
8 sale, rental or lease of any real property or part or portion thereof or
9 in the furnishing of facilities or services in connection therewith;

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

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

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

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

48 (1) To refuse to sell, rent, assign, lease or sublease, or offer for

1 sale, rental, lease, assignment, or sublease any real property or part
2 or portion thereof to any person or group of persons or to refuse to
3 negotiate for the sale, rental, lease, assignment, or sublease of any
4 real property or part or portion thereof to any person or group of
5 persons because of race, creed, color, national origin, ancestry,
6 marital status, domestic partnership status, familial status, sex,
7 gender identity or expression, affectional or sexual orientation,
8 disability, nationality, or source of lawful income used for rental or
9 mortgage payments, or to represent that any real property or portion
10 thereof is not available for inspection, sale, rental, lease,
11 assignment, or sublease when in fact it is so available, or otherwise
12 to deny or withhold any real property or any part or portion of
13 facilities thereof to or from any person or group of persons because
14 of race, creed, color, national origin, ancestry, marital status,
15 domestic partnership status, familial status, sex, gender identity or
16 expression, affectional or sexual orientation, disability or
17 nationality;

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

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

1 exclusively by individuals of one sex to any individual of the
2 opposite sex on the basis of sex;

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

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

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

23 (1) To discriminate against any person or group of persons
24 because of race, creed, color, national origin, ancestry, marital
25 status, domestic partnership status, sex, gender identity or
26 expression, affectional or sexual orientation, disability, familial
27 status or nationality, in the granting, withholding, extending,
28 modifying, renewing, or purchasing, or in the fixing of the rates,
29 terms, conditions or provisions of any such loan, extension of credit
30 or financial assistance or purchase thereof or in the extension of
31 services in connection therewith;

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

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

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

47 (5) To discriminate against any person or group of persons
48 because that person's family includes children under 18 years of

1 age, or to make an agreement or mortgage which provides that the
2 agreement or mortgage shall be rendered null and void upon the
3 birth of a child. This paragraph shall not apply to housing for older
4 persons as defined in subsection mm. of section 5 of P.L.1945,
5 c.169 (C.10:5-5).

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

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

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

43 m. For any person to:

44 (1) Grant or accept any letter of credit or other document which
45 evidences the transfer of funds or credit, or enter into any contract
46 for the exchange of goods or services, where the letter of credit,
47 contract, or other document contains any provisions requiring any
48 person to discriminate against or to certify that he, she or it has not

1 dealt with any other person on the basis of the race, creed, color,
2 national origin, ancestry, age, sex, gender identity or expression,
3 affectional or sexual orientation, marital status, domestic
4 partnership status, disability, liability for service in the Armed
5 Forces of the United States, or nationality of such other person or of
6 such other person's spouse, partners, members, stockholders,
7 directors, officers, managers, superintendents, agents, employees,
8 business associates, suppliers, or customers.

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

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

22 n. For any person to aid, abet, incite, compel, coerce, or induce
23 the doing of any act forbidden by subsections l. and m. of section
24 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
25 do so. Such prohibited conduct shall include, but not be limited to:

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

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

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

1 nationality.
2 (cf: P.L.2003, c.246, s.12)

3
4 10. Section 12 of P.L.1992, c.146 (C.10:5-12.5) is amended to
5 read as follows:

6 12. a. It shall be an unlawful discrimination for a municipality,
7 county or other local civil or political subdivision of the State of
8 New Jersey, or an officer, employee, or agent thereof, to exercise
9 the power to regulate land use or housing in a manner that
10 discriminates on the basis of race, creed, color, national origin,
11 ancestry, marital status, familial status, sex, gender identity or
12 expression, nationality or disability.

13 b. Notwithstanding the provisions of section 12 of P.L.1945,
14 c.169 (C.10:5-13) any person claiming to be aggrieved by an
15 unlawful discrimination under this section shall enforce this section
16 by private right of action in Superior Court. This section shall not
17 apply to discrimination in housing owned or managed by a
18 municipality, county or other local civil or political subdivision of
19 the State of New Jersey where such discrimination is otherwise
20 prohibited by section 11 of P.L.1945, c.169 (C.10:5-12).
21 (cf: P.L.2003, c.180, s.13)

22
23 11. Section 26 of P.L.1945, c.169 (C.10:5-27) is amended to
24 read as follows:

25 26. The provisions of this act shall be construed fairly and justly
26 with due regard to the interests of all parties. Nothing contained in
27 this act shall be deemed to repeal any of the provisions of the Civil
28 Rights Law or of any other law of this State relating to
29 discrimination because of race, creed, color, national origin,
30 ancestry, marital status, affectional or sexual orientation, disability,
31 gender identity or expression, nationality or sex or liability for
32 service in the Armed Forces of the United States; except that, as to
33 practices and acts declared unlawful by section 11 of this act, the
34 procedure herein provided shall, while pending, be exclusive; and
35 the final determination therein shall exclude any other action, civil
36 or criminal, based on the same grievance of the individual
37 concerned. Nothing herein contained shall bar, exclude or otherwise
38 affect any right or action, civil or criminal, which may exist
39 independently of any right to redress against or specific relief from
40 any unlawful employment practice or unlawful discrimination.
41 With respect only to affectional or sexual orientation and gender
42 identity or expression, nothing contained herein shall be construed
43 to require the imposition of affirmative action, plans or quotas as
44 specific relief from an unlawful employment practice or unlawful
45 discrimination.

46 (cf: P.L.2003, c.180, s.17)

1 12. Section 1 of P.L.1975, c.127 (C.10:5-31) is amended to read
2 as follows:

3 1. As used in this act:

4 a. "Public works contract" means any contract to be performed
5 for or on behalf of the State or any county or municipality or other
6 political subdivision of the State, or any agency or authority created
7 by any of the foregoing, for the construction, alteration or repair of
8 any building or public work or for the acquisition of materials,
9 equipment, supplies or services with respect to which
10 discrimination in the hiring of persons for the performance of work
11 thereunder or under any subcontract thereunder by reason of race,
12 creed, color, national origin, ancestry, marital status, affectional or
13 sexual orientation, nationality, gender identity or expression,
14 disability or sex is prohibited under R.S.10:2-1.

15 b. "Equal employment opportunity" means equality in
16 opportunity for employment by any contractor, subcontractor or
17 business firm engaged in the carrying out of a public works project
18 including its development, design, acquisition, construction,
19 management and operation.

20 (cf: P.L.2003, c.180, s.24)

21

22 13. Section 2 of P.L.1975, c.127 (C.10:5-32) is amended to read
23 as follow:

24 2. No public works contract shall be awarded by the State, a
25 county, municipality or other political subdivision of the State, or
26 any agency of or authority created by any of the foregoing, nor shall
27 any moneys be paid thereunder to any contractor, subcontractor or
28 business firm which has not agreed and guaranteed to afford equal
29 opportunity in performance of the contract and, except with respect
30 to affectional or sexual orientation, and gender identity or
31 expression, in accordance with an affirmative action program
32 approved by the State Treasurer.

33 (cf: P.L.1991, c.519, s.12)

34

35 14. Section 3 of P.L.1975, c.127 (C.10:5-33) is amended to read
36 as follows:

37 3. The State or any county or municipality or other political
38 subdivision of the State, or any agency of or authority created by
39 any of the foregoing, shall include in the bid specifications and the
40 contract provisions of any public works contract the following
41 language:

42 "During the performance of this contract, the contractor agrees as
43 follows:

44 a. The contractor or subcontractor, where applicable, will not
45 discriminate against any employee or applicant for employment
46 because of age, race, creed, color, national origin, ancestry, marital
47 status, affectional or sexual orientation, gender identity or
48 expression, disability, nationality or sex. Except with respect to

1 affectional or sexual orientation and gender identity or expression,
2 the contractor will take affirmative action to ensure that such
3 applicants are recruited and employed, and that employees are
4 treated during employment, without regard to their age, race, creed,
5 color, national origin, ancestry, marital status, affectional or sexual
6 orientation, gender identity or expression, disability, nationality or
7 sex. Such action shall include, but not be limited to the following:
8 employment, upgrading, demotion, or transfer; recruitment or
9 recruitment advertising; layoff or termination; rates of pay or other
10 forms of compensation; and selection for training, including
11 apprenticeship. The contractor agrees to post in conspicuous
12 places, available to employees and applicants for employment,
13 notices to be provided by the contracting officer setting forth the
14 provisions of this nondiscrimination clause;

15 b. The contractor or subcontractor, where applicable will, in all
16 solicitations or advertisements for employees placed by or on behalf
17 of the contractor, state that all qualified applicants will receive
18 consideration for employment without regard to age, race, creed,
19 color, national origin, ancestry, marital status, affectional or sexual
20 orientation, gender identity or expression, disability, nationality or
21 sex;

22 c. The contractor or subcontractor where applicable, will send to
23 each labor union or representative of workers with which he has a
24 collective bargaining agreement or other contract or understanding,
25 a notice, to be provided by the agency contracting officer, advising
26 the labor union or workers' representative of the contractor's
27 commitments under this act and shall post copies of the notice in
28 conspicuous places available to employees and applicants for
29 employment."

30 In soliciting bids for any public works contract the State or any
31 county or municipality or other political subdivision of the State, or
32 any agency of or authority created by any of the foregoing, shall
33 include in the advertisement and solicitation of bids the following
34 language: "Bidders are required to comply with the requirements of
35 P.L.1975, c.127."

36 (cf: P.L.2003, c.180, s.25)

37

38 15. Section 4 of P.L.1975, c.127 (C.10:5-34) is amended to read
39 as follows:

40 4. Each prospective bidder on a public works contract or
41 contracts and each subcontract bidder to a prime contract bidder
42 shall formulate and submit to the State Treasurer his or its
43 affirmative action program of equal opportunity whereby he or it
44 guarantees minorities employment in all employment categories;
45 the submission shall be accompanied by a fee in an amount to be
46 fixed by the State Treasurer. For the purposes of this section, equal
47 employment opportunity but not affirmative action is required with
48 respect to persons identified solely by their affectional or sexual

1 orientation and gender identity or expression. The State Treasurer
2 shall notify the bidder of approval or disapproval of his or its
3 program within 60 days of its submission; failure of the State
4 Treasurer to so act within 60 days shall constitute approval of the
5 program. Any existing federally approved or sanctioned affirmative
6 action program shall be approved by the State Treasurer.

7 No subcontract bidder who has less than five employees need
8 comply with the provisions of this section.
9 (cf: P.L.1991, c.519, s.14)

10

11 16. (New section) a. Nothing in P.L. , c. (C.)(now
12 pending before this Legislature as this bill) shall affect the ability of
13 an employer to require employees to adhere to reasonable
14 workplace appearance, grooming, and dress standards not precluded
15 by other provisions of State or federal law, provided that an
16 employer must allow an employee to appear, groom, and dress
17 consistently with the employee's gender identity or expression.

18 b. For the purposes of P.L. , c. (C.)(now pending before
19 this Legislature as this bill), a person shall be admitted to housing,
20 facilities and accommodations based on their gender identity or
21 expression, unless the Division of Civil Rights grants an exemption.

22

23 17. This act shall take effect on the 180th day following
24 enactment.

25

26

27

STATEMENT

28

29 This bill would amend the "Law Against Discrimination" (LAD)
30 to specify that gender identity or expression is a protected class
31 against discrimination.

32 In the recent New Jersey Appellate Division case, Enriquez v.
33 West Jersey Health Systems, 342 N.J.Super. 501 (2001), that court
34 held that gender dysphoria or transsexualism is a handicap under
35 the New Jersey's LAD and that the LAD precludes an employer
36 from discriminating against a person based on that person's sexual
37 identity or gender. In that case the plaintiff sued her employer for
38 wrongful termination of employment because she lost her position
39 as a medical director at an outpatient treatment facility after she
40 began her external transformation from a male to a female and prior
41 to her undergoing sex reassignment surgery. The plaintiff was
42 diagnosed with a "gender identity disorder." The trial judge
43 dismissed the complaint noting that the plaintiff could not bring the
44 a claim for sexual orientation discrimination under the LAD. The
45 Appellate Division concluded that, " . . . sex discrimination under
46 the LAD includes gender discrimination so as to protect plaintiff
47 from gender stereotyping and discrimination from transforming
48 herself from a man to a woman." Id. at 516. The court stated that,

1 "It is incomprehensible to us that our Legislature would ban
2 discrimination against heterosexual men and women; against
3 homosexual men and women; against bisexual men and women;
4 against men and women who are perceived, presumed or identified
5 by others as not conforming to the stereotypical notions of how men
6 and women behave, but would condone discrimination against men
7 or women who seek to change their anatomical sex because they
8 suffer from a gender identity disorder. We conclude that sex
9 discrimination under the LAD includes gender discrimination so as
10 to protect plaintiff from gender stereotyping and discrimination for
11 transforming herself from a man to a woman." *Id.* at 515.
12 (Emphasis added.). The court reversed the judge's assessment that a
13 claim for gender dysphoria could not be a handicap under the LAD.
14 The court remanded the plaintiff's gender discrimination claim. *Id.*
15 at 523.

16 This bill would codify the court's reasoning in the *Enriquez*
17 decision and expand the provisions of the LAD to include
18 discrimination on the basis of gender identity or expression. The
19 bill would define "gender identity or expression" as "having or
20 being perceived as having a gender related identity or expression
21 whether or not stereo typically associated with a person's assigned
22 sex at birth." This definition is intended to cover everyone whether
23 they have a typical or non-typical gender identity and expression
24 and is consistent with case law that held any discrimination based
25 on gender stereotypes is prohibited by the LAD.

26 The bill provides that the provisions of the bill would not
27 preclude an employer from requiring employees to adhere to
28 reasonable workplace appearance, grooming and dress standards,
29 provided that an employer allows an employee to dress in a manner
30 consistent with the employee's gender identity.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 362

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 13, 2006

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 362.

This bill would amend the "Law Against Discrimination" (LAD) to specify that gender identity or expression is a protected class against discrimination.

In the New Jersey Appellate Division case, Enriquez v. West Jersey Health Systems, 342 N.J.Super. 501 (2001) cert. den. 170 N.J.211 (2001), that court held that gender dysphoria or transsexualism is a handicap under the New Jersey's LAD and that the LAD precludes an employer from discriminating against a person based on that person's sexual identity or gender. In that case the plaintiff sued her employer for wrongful termination of employment because she lost her position as a medical director at an outpatient treatment facility after she began her external transformation from a male to a female and prior to her undergoing sex reassignment surgery. The plaintiff was diagnosed with a "gender identity disorder." The trial judge dismissed the complaint noting that the plaintiff could not bring the a claim for sexual orientation discrimination under the LAD. However, the Appellate Division concluded that "[S]ex discrimination under the LAD includes gender discrimination so as to protect plaintiff from gender stereotyping and discrimination from transforming herself from a man to a woman." *Id.* at 516. The court stated that, "It is incomprehensible to us that our Legislature would ban discrimination against heterosexual men and women; against homosexual men and women; against bisexual men and women; against men and women who are perceived, presumed or identified by others as not conforming to the stereotypical notions of how men and women behave, but would condone discrimination against men or women who seek to change their anatomical sex because they suffer from a gender identity disorder. We conclude that sex discrimination under the LAD includes gender discrimination so as to protect plaintiff from gender stereotyping and discrimination for transforming herself from a man to a woman." *Id.* at 515. (Emphasis added.). The court reversed the assessment of the trial court that a claim for gender dysphoria could

not be a handicap under the LAD and remanded the plaintiff's gender discrimination claim. *Id.* at 523.

This bill would codify the court's reasoning in the *Enriquez* decision and expand the provisions of the LAD to include discrimination on the basis of gender identity or expression. The bill would define "gender identity or expression" as "having or being perceived as having a gender related identity or expression whether or not stereo typically associated with a person's assigned sex at birth." This definition is intended to cover everyone whether they have a typical or non-typical gender identity and expression and is consistent with case law that held that any discrimination based on gender stereotypes is prohibited by the LAD.

The committee amended the bill to delete section 16 and place the substance of that section into the appropriate amendatory section which is N.J.S.A.10:5-12 (section 9 of the bill). The amendments move the provision concerning access to housing, facilities and accommodations from subsection b. of section 16 of the bill to subsection f. (1), subsection g. (3) and subsection h. (3) of N.J.S.A.10:5-12. The provision concerning the employee's adherence to reasonable dress standards is moved from subsection a. of section 16 to become a new subsection p. of N.J.S.A.10:5-12.

The committee also amended section 4 of the bill, which amends N.J.S.A.10:5-5, the definitional section, to provide that the term "gender identity or expression" includes transgender status.

This bill was pre-filed for introduction in the 2006-2007 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
[First Reprint]
SENATE, No. 362

with Assembly Floor Amendments
(Proposed By Assemblyman GUSCIORA)

ADOPTED: DECEMBER 14, 2006

This bill would amend the "Law Against Discrimination" (LAD) to specify that gender identity or expression is a protected class against discrimination.

These floor amendments would amend section 4 of the bill, which amends N.J.S.A.10:5-5, the definitional section, to delete the following additional language which was added by the Senate Judiciary Committee: "Gender identity or expression' includes transgender status."

These amendments would make this bill identical to Assembly Bill No. 930(1R).

ASSEMBLY, No. 930

STATE OF NEW JERSEY

212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman JOSEPH VAS

District 19 (Middlesex)

Co-Sponsored by:

Assemblyman Green, Assemblywomen Voss, Cruz-Perez, Assemblymen Stack, Barnes, Hackett, Assemblywomen Quigley, Stender, Assemblymen Chivukula, Johnson, Connors, Conaway, Assemblywoman Oliver, Assemblymen Panter, Diegnan, Egan, Gordon, Burzichelli, Caraballo, Biondi, Giblin and Cryan

SYNOPSIS

Amends "Law against Discrimination" concerning gender identity or expression discrimination.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 10/20/2006)

1 AN ACT concerning the "Law against Discrimination" and
2 amending various parts of the statutory law 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. R.S. 10:2-1 is amended to read as follows:

9 10:2-1. Antidiscrimination provisions. Every contract for or on
10 behalf of the State or any county or municipality or other political
11 subdivision of the State, or any agency of or authority created by
12 any of the foregoing, for the construction, alteration or repair of any
13 public building or public work or for the acquisition of materials,
14 equipment, supplies or services shall contain provisions by which
15 the contractor agrees that:

16 a. In the hiring of persons for the performance of work under
17 this contract or any subcontract hereunder, or for the procurement,
18 manufacture, assembling or furnishing of any such materials,
19 equipment, supplies or services to be acquired under this contract,
20 no contractor, nor any person acting on behalf of such contractor or
21 subcontractor, shall, by reason of race, creed, color, national origin,
22 ancestry, marital status, gender identity or expression, affectional or
23 sexual orientation or sex, discriminate against any person who is
24 qualified and available to perform the work to which the
25 employment relates;

26 b. No contractor, subcontractor, nor any person on his behalf
27 shall, in any manner, discriminate against or intimidate any
28 employee engaged in the performance of work under this contract
29 or any subcontract hereunder, or engaged in the procurement,
30 manufacture, assembling or furnishing of any such materials,
31 equipment, supplies or services to be acquired under such contract,
32 on account of race, creed, color, national origin, ancestry, marital
33 status, gender identity or expression, affectional or sexual
34 orientation or sex;

35 c. There may be deducted from the amount payable to the
36 contractor by the contracting public agency, under this contract, a
37 penalty of \$50.00 for each person for each calendar day during
38 which such person is discriminated against or intimidated in
39 violation of the provisions of the contract; and

40 d. This contract may be canceled or terminated by the
41 contracting public agency, and all money due or to become due
42 hereunder may be forfeited, for any violation of this section of the
43 contract occurring after notice to the contractor from the contracting
44 public agency of any prior violation of this section of the contract.

45 No provision in this section shall be construed to prevent a board

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 of education from designating that a contract, subcontract or other
2 means of procurement of goods, services, equipment or construction
3 shall be awarded to a small business enterprise, minority business
4 enterprise or a women's business enterprise pursuant to P.L.1985,
5 c.490 (C.18A:18A-51 et seq.).
6 (cf: P.L.1991, c.519, s.10)
7

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

10 3. The Legislature finds and declares that practices of
11 discrimination against any of its inhabitants, because of race, creed,
12 color, national origin, ancestry, age, sex, gender identity or
13 expression, affectional or sexual orientation, marital status, familial
14 status, liability for service in the Armed Forces of the United States,
15 disability or nationality, are matters of concern to the government
16 of the State, and that such discrimination threatens not only the
17 rights and proper privileges of the inhabitants of the State but
18 menaces the institutions and foundation of a free democratic State;
19 provided, however, that nothing in this expression of policy
20 prevents the making of legitimate distinctions between citizens and
21 aliens when required by federal law or otherwise necessary to
22 promote the national interest.

23 The Legislature further declares its opposition to such practices
24 of discrimination when directed against any person by reason of the
25 race, creed, color, national origin, ancestry, age, sex, gender
26 identity or expression, affectional or sexual orientation, marital
27 status, liability for service in the Armed Forces of the United States,
28 disability or nationality of that person or that person's spouse,
29 partners, members, stockholders, directors, officers, managers,
30 superintendents, agents, employees, business associates, suppliers,
31 or customers, in order that the economic prosperity and general
32 welfare of the inhabitants of the State may be protected and
33 ensured.

34 The Legislature further finds that because of discrimination,
35 people suffer personal hardships, and the State suffers a grievous
36 harm. The personal hardships include: economic loss; time loss;
37 physical and emotional stress; and in some cases severe emotional
38 trauma, illness, homelessness or other irreparable harm resulting
39 from the strain of employment controversies; relocation, search and
40 moving difficulties; anxiety caused by lack of information,
41 uncertainty, and resultant planning difficulty; career, education,
42 family and social disruption; and adjustment problems, which
43 particularly impact on those protected by this act. Such harms
44 have, under the common law, given rise to legal remedies, including
45 compensatory and punitive damages. The Legislature intends that
46 such damages be available to all persons protected by this act and
47 that this act shall be liberally construed in combination with other
48 protections available under the laws of this State.

1 (cf: P.L.2003, c.180, s.3)

2

3 3. Section 4 of P.L.1945, c.169 (C.10:5-4) is amended to read as
4 follows:

5 4. All persons shall have the opportunity to obtain employment,
6 and to obtain all the accommodations, advantages, facilities, and
7 privileges of any place of public accommodation, publicly assisted
8 housing accommodation, and other real property without
9 discrimination because of race, creed, color, national origin,
10 ancestry, age, marital status, affectional or sexual orientation,
11 familial status, disability, nationality, sex, gender identity or
12 expression or source of lawful income used for rental or mortgage
13 payments, subject only to conditions and limitations applicable
14 alike to all persons. This opportunity is recognized as and declared
15 to be a civil right.

16 (cf: P.L.2003, c.180, s.4)

17

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

20 5. As used in this act, unless a different meaning clearly appears
21 from the context:

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

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

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

33 d. "Unlawful employment practice" and "unlawful
34 discrimination" include only those unlawful practices and acts
35 specified in section 11 of this act.

36 e. "Employer" includes all persons as defined in subsection a. of
37 this section unless otherwise specifically exempt under another
38 section of this act, and includes the State, any political or civil
39 subdivision thereof, and all public officers, agencies, boards or
40 bodies.

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

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

- 1 a system of national selective service.
- 2 h. "Division" means the "Division on Civil Rights" created by
3 this act.
- 4 i. "Attorney General" means the Attorney General of the State
5 of New Jersey or his representative or designee.
- 6 j. "Commission" means the Commission on Civil Rights
7 created by this act.
- 8 k. "Director" means the Director of the Division on Civil
9 Rights.
- 10 l. "A place of public accommodation" shall include, but not be
11 limited to: any tavern, road house, hotel, motel, trailer camp,
12 summer camp, day camp, or resort camp, whether for entertainment
13 of transient guests or accommodation of those seeking health,
14 recreation or rest; any producer, manufacturer, wholesaler,
15 distributor, retail shop, store, establishment, or concession dealing
16 with goods or services of any kind; any restaurant, eating house, or
17 place where food is sold for consumption on the premises; any
18 place maintained for the sale of ice cream, ice and fruit preparations
19 or their derivatives, soda water or confections, or where any
20 beverages of any kind are retailed for consumption on the premises;
21 any garage, any public conveyance operated on land or water, or in
22 the air, any stations and terminals thereof; any bathhouse,
23 boardwalk, or seashore accommodation; any auditorium, meeting
24 place, or hall; any theater, motion-picture house, music hall, roof
25 garden, skating rink, swimming pool, amusement and recreation
26 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
27 pool parlor, or other place of amusement; any comfort station; any
28 dispensary, clinic or hospital; any public library; any kindergarten,
29 primary and secondary school, trade or business school, high
30 school, academy, college and university, or any educational
31 institution under the supervision of the State Board of Education, or
32 the Commissioner of Education of the State of New Jersey.
33 Nothing herein contained shall be construed to include or to apply
34 to any institution, bona fide club, or place of accommodation, which
35 is in its nature distinctly private; nor shall anything herein contained
36 apply to any educational facility operated or maintained by a bona
37 fide religious or sectarian institution, and the right of a natural
38 parent or one in loco parentis to direct the education and upbringing
39 of a child under his control is hereby affirmed; nor shall anything
40 herein contained be construed to bar any private secondary or post
41 secondary school from using in good faith criteria other than race,
42 creed, color, national origin, ancestry, gender identity or expression
43 or affectional or sexual orientation in the admission of students.
- 44 m. "A publicly assisted housing accommodation" shall include
45 all housing built with public funds or public assistance pursuant to
46 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
47 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
48 c.184, and all housing financed in whole or in part by a loan,

1 whether or not secured by a mortgage, the repayment of which is
2 guaranteed or insured by the federal government or any agency
3 thereof.

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

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

47 p. "Real estate salesperson" includes any person who, for
48 compensation, valuable consideration or commission, or other thing

1 of value, or by reason of a promise or reasonable expectation
2 thereof, is employed by and operates under the supervision of a
3 licensed real estate broker to sell or offer to sell, buy or offer to buy
4 or negotiate the purchase, sale or exchange of real estate, or offers
5 or attempts to negotiate a loan secured or to be secured by a
6 mortgage or other encumbrance upon or transfer of real estate, or to
7 lease or rent, or offer to lease or rent any real estate for others, or to
8 collect rents for the use of real estate, or to solicit for prospective
9 purchasers or lessees of real estate, or who is employed by a
10 licensed real estate broker to sell or offer to sell lots or other parcels
11 of real estate, at a stated salary, or upon a commission, or upon a
12 salary and commission, or otherwise to sell real estate, or any parts
13 thereof, in lots or other parcels.

14 q. "Disability" means physical disability, infirmity,
15 malformation or disfigurement which is caused by bodily injury,
16 birth defect or illness including epilepsy and other seizure
17 disorders, and which shall include, but not be limited to, any degree
18 of paralysis, amputation, lack of physical coordination, blindness or
19 visual impediment, deafness or hearing impediment, muteness or
20 speech impediment or physical reliance on a service or guide dog,
21 wheelchair, or other remedial appliance or device, or any mental,
22 psychological or developmental disability resulting from
23 anatomical, psychological, physiological or neurological conditions
24 which prevents the normal exercise of any bodily or mental
25 functions or is demonstrable, medically or psychologically, by
26 accepted clinical or laboratory diagnostic techniques. Disability
27 shall also mean AIDS or HIV infection.

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

33 s. "Guide dog" means a dog used to assist deaf persons or
34 which is fitted with a special harness so as to be suitable as an aid to
35 the mobility of a blind person, and is used by a blind person who
36 has satisfactorily completed a specific course of training in the use
37 of such a dog, and has been trained by an organization generally
38 recognized by agencies involved in the rehabilitation of the blind or
39 deaf as reputable and competent to provide dogs with training of
40 this type.

41 t. "Guide or service dog trainer" means any person who is
42 employed by an organization generally recognized by agencies
43 involved in the rehabilitation of persons with disabilities as
44 reputable and competent to provide dogs with training, and who is
45 actually involved in the training process.

46 u. "Housing accommodation" means any publicly assisted
47 housing accommodation or any real property, or portion thereof,
48 which is used or occupied, or is intended, arranged, or designed to

- 1 be used or occupied, as the home, residence or sleeping place of one
2 or more persons, but shall not include any single family residence
3 the occupants of which rent, lease, or furnish for compensation not
4 more than one room therein.
- 5 v. "Public facility" means any place of public accommodation
6 and any street, highway, sidewalk, walkway, public building, and
7 any other place or structure to which the general public is regularly,
8 normally or customarily permitted or invited.
- 9 w. "Deaf person" means any person whose hearing is so
10 severely impaired that the person is unable to hear and understand
11 normal conversational speech through the unaided ear alone, and
12 who must depend primarily on a supportive device or visual
13 communication such as writing, lip reading, sign language, and
14 gestures.
- 15 x. "Atypical hereditary cellular or blood trait" means sickle cell
16 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
17 fibrosis trait.
- 18 y. "Sickle cell trait" means the condition wherein the major
19 natural hemoglobin components present in the blood of the
20 individual are hemoglobin A (normal) and hemoglobin S (sickle
21 hemoglobin) as defined by standard chemical and physical analytic
22 techniques, including electrophoresis; and the proportion of
23 hemoglobin A is greater than the proportion of hemoglobin S or one
24 natural parent of the individual is shown to have only normal
25 hemoglobin components (hemoglobin A, hemoglobin A2,
26 hemoglobin F) in the normal proportions by standard chemical and
27 physical analytic tests.
- 28 z. "Hemoglobin C trait" means the condition wherein the major
29 natural hemoglobin components present in the blood of the
30 individual are hemoglobin A (normal) and hemoglobin C as defined
31 by standard chemical and physical analytic techniques, including
32 electrophoresis; and the proportion of hemoglobin A is greater than
33 the proportion of hemoglobin C or one natural parent of the
34 individual is shown to have only normal hemoglobin components
35 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
36 proportions by standard chemical and physical analytic tests.
- 37 aa. "Thalassemia trait" means the presence of the thalassemia
38 gene which in combination with another similar gene results in the
39 chronic hereditary disease Cooley's anemia.
- 40 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
41 which in combination with another similar gene results in the
42 chronic hereditary disease Tay-Sachs.
- 43 cc. "Cystic fibrosis trait" means the presence of the cystic
44 fibrosis gene which in combination with another similar gene
45 results in the chronic hereditary disease cystic fibrosis.
- 46 dd. "Service dog" means any dog individually trained to the
47 requirements of a person with a disability including, but not limited
48 to minimal protection work, rescue work, pulling a wheelchair or

- 1 retrieving dropped items. This term shall include a "seizure dog"
2 trained to alert or otherwise assist persons subject to epilepsy or
3 other seizure disorders.
- 4 ee. "Qualified Medicaid applicant" means an individual who is a
5 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).
- 6 ff. "AIDS" means acquired immune deficiency syndrome as
7 defined by the Centers for Disease Control and Prevention of the
8 United States Public Health Service.
- 9 gg. "HIV infection" means infection with the human
10 immunodeficiency virus or any other related virus identified as a
11 probable causative agent of AIDS.
- 12 hh. "Affectional or sexual orientation" means male or female
13 heterosexuality, homosexuality or bisexuality by inclination,
14 practice, identity or expression, having a history thereof or being
15 perceived, presumed or identified by others as having such an
16 orientation.
- 17 ii. "Heterosexuality" means affectional, emotional or physical
18 attraction or behavior which is primarily directed towards persons
19 of the other gender.
- 20 jj. "Homosexuality" means affectional, emotional or physical
21 attraction or behavior which is primarily directed towards persons
22 of the same gender.
- 23 kk. "Bisexuality" means affectional, emotional or physical
24 attraction or behavior which is directed towards persons of either
25 gender.
- 26 ll. "Familial status" means being the natural parent of a child,
27 the adoptive parent of a child, the resource family parent of a child,
28 having a "parent and child relationship" with a child as defined by
29 State law, or having sole or joint legal or physical custody, care,
30 guardianship, or visitation with a child, or any person who is
31 pregnant or is in the process of securing legal custody of any
32 individual who has not attained the age of 18 years.
- 33 mm. "Housing for older persons" means housing:
- 34 (1) provided under any State program that the Attorney General
35 determines is specifically designed and operated to assist elderly
36 persons (as defined in the State program); or provided under any
37 federal program that the United States Department of Housing and
38 Urban Development determines is specifically designed and
39 operated to assist elderly persons (as defined in the federal
40 program); or
- 41 (2) intended for, and solely occupied by persons 62 years of age
42 or older; or
- 43 (3) intended and operated for occupancy by at least one person
44 55 years of age or older per unit. In determining whether housing
45 qualifies as housing for older persons under this subsection, the
46 Attorney General shall adopt regulations which require at least the
47 following factors:
- 48 (a) the existence of significant facilities and services

1 specifically designed to meet the physical or social needs of older
2 persons, or if the provision of such facilities and services is not
3 practicable, that such housing is necessary to provide important
4 housing opportunities for older persons; and

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

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

10 Housing shall not fail to meet the requirements for housing for
11 older persons by reason of: persons residing in such housing as of
12 September 13, 1988 not meeting the age requirements of this
13 subsection, provided that new occupants of such housing meet the
14 age requirements of this subsection; or unoccupied units, provided
15 that such units are reserved for occupancy by persons who meet the
16 age requirements of this subsection.

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

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

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

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

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

36 (cf: P.L.2004, c.130, s.37)

37

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

40 6. There is created in the Department of Law and Public Safety
41 a division known as "The Division on Civil Rights" with power to
42 prevent and eliminate discrimination in the manner prohibited by
43 this act against persons because of race, creed, color, national
44 origin, ancestry, age, marital status, affectional or sexual
45 orientation, gender identity or expression, familial status,
46 nationality, disability, or sex or because of their liability for service
47 in the Armed Forces of the United States, by employers, labor
48 organizations, employment agencies or other persons and to take

1 other actions against discrimination because of race, creed, color,
2 national origin, ancestry, marital status, sex, familial status,
3 nationality, disability, or age or because of their liability for service
4 in the Armed Forces of the United States, as herein provided; and
5 the division created hereunder is given general jurisdiction and
6 authority for such purposes.

7 (cf: P.L.2003, c.180, s.7)

8

9 6. Section 8 of P.L.1945, c.169 (C.10:5-8) is amended to read as
10 follows:

11 8. The Attorney General shall:

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

14 b. Administer the work of the division.

15 c. Organize the division into sections, which shall include but
16 not be limited to a section which shall receive, investigate, and act
17 upon complaints alleging discrimination against persons because of
18 race, creed, color, national origin, ancestry, age, marital status,
19 affectional or sexual orientation, gender identity or expression,
20 familial status, disability, nationality or sex or because of their
21 liability for service in the Armed Forces of the United States; and
22 another which shall, in order to eliminate prejudice and to further
23 good will among the various racial and religious and nationality
24 groups in this State, study, recommend, prepare and implement, in
25 cooperation with such other departments of the State Government
26 or any other agencies, groups or entities both public and private,
27 such educational and human relations programs as are consonant
28 with the objectives of this act; and prescribe the organization of said
29 sections and the duties of his subordinates and assistants.

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

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

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

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

48 h. Conduct investigations, receive complaints and conduct

1 hearings thereon other than those complaints received and hearings
2 held pursuant to the provisions of this act.

3 i. In connection with any investigation or hearing held
4 pursuant to the provisions of this act, subpoena witnesses, compel
5 their attendance, administer oaths, take the testimony of any person,
6 under oath, and, in connection therewith, require the production for
7 examination of any books or papers relating to any subject matter
8 under investigation or in question by the division and conduct such
9 discovery procedures which may include the taking of
10 interrogatories and oral depositions as shall be deemed necessary by
11 the Attorney General in any investigation. The Attorney General
12 may make rules as to the issuance of subpoenas by the director.
13 The failure of any witness when duly subpoenaed to attend, give
14 testimony, or produce evidence shall be punishable by the Superior
15 Court of New Jersey in the same manner as such failure is
16 punishable by such court in a case therein pending.

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

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

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

35 (cf: P.L.2003, c.180, s.8)

36

37 7. Section 1 of P.L.1954, c.198 (C.10:5-9.1) is amended to read
38 as follows:

39 1. The Division on Civil Rights in the Department of Law and
40 Public Safety shall enforce the laws of this State against
41 discrimination in housing built with, or leased with the assistance
42 of, public funds or public assistance, pursuant to any law, and in
43 real property, as defined in the law hereby supplemented, because
44 of race, religious principles, color, national origin, ancestry, marital
45 status, affectional or sexual orientation, familial status, disability,
46 nationality, sex, gender identity or expression or source of lawful
47 income used for rental or mortgage payments. The said laws shall
48 be so enforced in the manner prescribed in the act to which this act

1 is a supplement.
2 (cf: P.L.2003, c.180, s.9)

3
4 8. Section 1 of P.L.1945, c.169 (C.10:5-10) is amended to read
5 as follows:

6 9. The commission shall:

7 a. Consult with and advise the Attorney General with respect to
8 the work of the division.

9 b. Survey and study the operations of the division.

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

13 The mayors or chief executive officers of the municipalities in
14 the State may appoint local commissions on civil rights to aid in
15 effectuating the purposes of this act. Such local commissions shall
16 be composed of representative citizens serving without
17 compensation. Such commissions shall attempt to foster through
18 community effort or otherwise, good will, cooperation and
19 conciliation among the groups and elements of the inhabitants of
20 the community, and they may be empowered by the local governing
21 bodies to make recommendations to them for the development of
22 policies and procedures in general and for programs of formal and
23 informal education that will aid in eliminating all types of
24 discrimination based on race, creed, color, national origin, ancestry,
25 age, marital status, affectional or sexual orientation, gender identity
26 or expression, familial status, disability, nationality or sex.

27 (cf: P.L.2003, c.180, s.11)

28
29 9. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to read
30 as follows:

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

33 a. For an employer, because of the race, creed, color, national
34 origin, ancestry, age, marital status, domestic partnership status,
35 affectional or sexual orientation, genetic information, sex, gender
36 identity or expression, disability or atypical hereditary cellular or
37 blood trait of any individual, or because of the liability for service
38 in the Armed Forces of the United States or the nationality of any
39 individual, or because of the refusal to submit to a genetic test or
40 make available the results of a genetic test to an employer, to refuse
41 to hire or employ or to bar or to discharge or require to retire, unless
42 justified by lawful considerations other than age, from employment
43 such individual or to discriminate against such individual in
44 compensation or in terms, conditions or privileges of employment;
45 provided, however, it shall not be an unlawful employment practice
46 to refuse to accept for employment an applicant who has received a
47 notice of induction or orders to report for active duty in the armed
48 forces; provided further that nothing herein contained shall be

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

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

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

38 b. For a labor organization, because of the race, creed, color,
39 national origin, ancestry, age, marital status, domestic partnership
40 status, affectional or sexual orientation, gender identity or
41 expression, disability or sex of any individual, or because of the
42 liability for service in the Armed Forces of the United States or
43 nationality of any individual, to exclude or to expel from its
44 membership such individual or to discriminate in any way against
45 any of its members, against any applicant for, or individual included
46 in, any apprentice or other training program or against any
47 employer or any individual employed by an employer; provided,
48 however, that nothing herein contained shall be construed to bar a

1 labor organization from excluding from its apprentice or other
2 training programs any person on the basis of sex in those certain
3 circumstances where sex is a bona fide occupational qualification
4 reasonably necessary to the normal operation of the particular
5 apprentice or other training program.

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

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

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

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

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

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

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

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

42 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
43 to deny to or withhold from any person or group of persons any real
44 property or part or portion thereof because of race, creed, color,
45 national origin, ancestry, marital status, domestic partnership status,
46 sex, gender identity or expression, affectional or sexual orientation,
47 familial status, disability, nationality, or source of lawful income
48 used for rental or mortgage payments;

1 (2) To discriminate against any person or group of persons
2 because of race, creed, color, national origin, ancestry, marital
3 status, domestic partnership status, sex, gender identity or
4 expression, affectional or sexual orientation, familial status,
5 disability, nationality or source of lawful income used for rental or
6 mortgage payments in the terms, conditions or privileges of the
7 sale, rental or lease of any real property or part or portion thereof or
8 in the furnishing of facilities or services in connection therewith;

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

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

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

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

47 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
48 sale, rental, lease, assignment, or sublease any real property or part

1 or portion thereof to any person or group of persons or to refuse to
2 negotiate for the sale, rental, lease, assignment, or sublease of any
3 real property or part or portion thereof to any person or group of
4 persons because of race, creed, color, national origin, ancestry,
5 marital status, domestic partnership status, familial status, sex,
6 gender identity or expression, affectional or sexual orientation,
7 disability, nationality, or source of lawful income used for rental or
8 mortgage payments, or to represent that any real property or portion
9 thereof is not available for inspection, sale, rental, lease,
10 assignment, or sublease when in fact it is so available, or otherwise
11 to deny or withhold any real property or any part or portion of
12 facilities thereof to or from any person or group of persons because
13 of race, creed, color, national origin, ancestry, marital status,
14 domestic partnership status, familial status, sex, gender identity or
15 expression, affectional or sexual orientation, disability or
16 nationality;

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

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

- 1 opposite sex on the basis of sex;
- 2 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
3 to deny to or withhold from any person or group of persons any real
4 property or part or portion thereof because of the source of any
5 lawful income received by the person or the source of any lawful
6 rent payment to be paid for the real property; or
- 7 (5) To refuse to rent or lease any real property to another person
8 because that person's family includes children under 18 years of
9 age, or to make an agreement, rental or lease of any real property
10 which provides that the agreement, rental or lease shall be rendered
11 null and void upon the birth of a child. This paragraph shall not
12 apply to housing for older persons as defined in subsection mm. of
13 section 5 of P.L.1945, c.169 (C.10:5-5).
- 14 i. For any person, bank, banking organization, mortgage
15 company, insurance company or other financial institution, lender
16 or credit institution involved in the making or purchasing of any
17 loan or extension of credit, for whatever purpose, whether secured
18 by residential real estate or not, including but not limited to
19 financial assistance for the purchase, acquisition, construction,
20 rehabilitation, repair or maintenance of any real property or part or
21 portion thereof or any agent or employee thereof:
- 22 (1) To discriminate against any person or group of persons
23 because of race, creed, color, national origin, ancestry, marital
24 status, domestic partnership status, sex, gender identity or
25 expression, affectional or sexual orientation, disability, familial
26 status or nationality, in the granting, withholding, extending,
27 modifying, renewing, or purchasing, or in the fixing of the rates,
28 terms, conditions or provisions of any such loan, extension of credit
29 or financial assistance or purchase thereof or in the extension of
30 services in connection therewith;
- 31 (2) To use any form of application for such loan, extension of
32 credit or financial assistance or to make record or inquiry in
33 connection with applications for any such loan, extension of credit
34 or financial assistance which expresses, directly or indirectly, any
35 limitation, specification or discrimination as to race, creed, color,
36 national origin, ancestry, marital status, domestic partnership status,
37 sex, gender identity or expression, affectional or sexual orientation,
38 disability, familial status or nationality or any intent to make any
39 such limitation, specification or discrimination; unless otherwise
40 required by law or regulation to retain or use such information;
- 41 (3) (Deleted by amendment, P.L.2003, c.180).
- 42 (4) To discriminate against any person or group of persons
43 because of the source of any lawful income received by the person
44 or the source of any lawful rent payment to be paid for the real
45 property; or
- 46 (5) To discriminate against any person or group of persons
47 because that person's family includes children under 18 years of
48 age, or to make an agreement or mortgage which provides that the

1 agreement or mortgage shall be rendered null and void upon the
2 birth of a child. This paragraph shall not apply to housing for older
3 persons as defined in subsection mm. of section 5 of P.L.1945,
4 c.169 (C.10:5-5).

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

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

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

43 m. For any person to:

44 (1) Grant or accept any letter of credit or other document which
45 evidences the transfer of funds or credit, or enter into any contract
46 for the exchange of goods or services, where the letter of credit,
47 contract, or other document contains any provisions requiring any
48 person to discriminate against or to certify that he, she or it has not

1 dealt with any other person on the basis of the race, creed, color,
2 national origin, ancestry, age, sex, gender identity or expression,
3 affectional or sexual orientation, marital status, domestic
4 partnership status, disability, liability for service in the Armed
5 Forces of the United States, or nationality of such other person or of
6 such other person's spouse, partners, members, stockholders,
7 directors, officers, managers, superintendents, agents, employees,
8 business associates, suppliers, or customers.

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

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

22 n. For any person to aid, abet, incite, compel, coerce, or induce
23 the doing of any act forbidden by subsections l. and m. of section
24 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
25 do so. Such prohibited conduct shall include, but not be limited to:

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

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

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

1 nationality.
2 (cf: P.L.2003, c.246, s.12)

3
4 10. Section 12 of P.L.1992, c.146 (C.10:5-12.5) is amended to
5 read as follows:

6 12. a. It shall be an unlawful discrimination for a municipality,
7 county or other local civil or political subdivision of the State of
8 New Jersey, or an officer, employee, or agent thereof, to exercise
9 the power to regulate land use or housing in a manner that
10 discriminates on the basis of race, creed, color, national origin,
11 ancestry, marital status, familial status, sex, gender identity or
12 expression, nationality or disability.

13 b. Notwithstanding the provisions of section 12 of P.L.1945,
14 c.169 (C.10:5-13) any person claiming to be aggrieved by an
15 unlawful discrimination under this section shall enforce this section
16 by private right of action in Superior Court. This section shall not
17 apply to discrimination in housing owned or managed by a
18 municipality, county or other local civil or political subdivision of
19 the State of New Jersey where such discrimination is otherwise
20 prohibited by section 11 of P.L.1945, c.169 (C.10:5-12).
21 (cf: P.L.2003, c.180, s.13)

22
23 11. Section 26 of P.L.1945, c.169 (C.10:5-27) is amended to
24 read as follows:

25 26. The provisions of this act shall be construed fairly and justly
26 with due regard to the interests of all parties. Nothing contained in
27 this act shall be deemed to repeal any of the provisions of the Civil
28 Rights Law or of any other law of this State relating to
29 discrimination because of race, creed, color, national origin,
30 ancestry, marital status, affectional or sexual orientation, disability,
31 gender identity or expression, nationality or sex or liability for
32 service in the Armed Forces of the United States; except that, as to
33 practices and acts declared unlawful by section 11 of this act, the
34 procedure herein provided shall, while pending, be exclusive; and
35 the final determination therein shall exclude any other action, civil
36 or criminal, based on the same grievance of the individual
37 concerned. Nothing herein contained shall bar, exclude or otherwise
38 affect any right or action, civil or criminal, which may exist
39 independently of any right to redress against or specific relief from
40 any unlawful employment practice or unlawful discrimination.
41 With respect only to affectional or sexual orientation and gender
42 identity or expression, nothing contained herein shall be construed
43 to require the imposition of affirmative action, plans or quotas as
44 specific relief from an unlawful employment practice or unlawful
45 discrimination.

46 (cf: P.L.2003, c.180, s.17)

1 12. Section 1 of P.L.1975, c.127 (C.10:5-31) is amended to read
2 as follows:

3 1. As used in this act:

4 a. "Public works contract" means any contract to be performed
5 for or on behalf of the State or any county or municipality or other
6 political subdivision of the State, or any agency or authority created
7 by any of the foregoing, for the construction, alteration or repair of
8 any building or public work or for the acquisition of materials,
9 equipment, supplies or services with respect to which
10 discrimination in the hiring of persons for the performance of work
11 thereunder or under any subcontract thereunder by reason of race,
12 creed, color, national origin, ancestry, marital status, affectional or
13 sexual orientation, nationality, gender identity or expression,
14 disability or sex is prohibited under R.S.10:2-1.

15 b. "Equal employment opportunity" means equality in
16 opportunity for employment by any contractor, subcontractor or
17 business firm engaged in the carrying out of a public works project
18 including its development, design, acquisition, construction,
19 management and operation.

20 (cf: P.L.2003, c.180, s.24)

21

22 13. Section 2 of P.L.1975, c.127 (C.10:5-32) is amended to read
23 as follow:

24 2. No public works contract shall be awarded by the State, a
25 county, municipality or other political subdivision of the State, or
26 any agency of or authority created by any of the foregoing, nor shall
27 any moneys be paid thereunder to any contractor, subcontractor or
28 business firm which has not agreed and guaranteed to afford equal
29 opportunity in performance of the contract and, except with respect
30 to affectional or sexual orientation, and gender identity or
31 expression, in accordance with an affirmative action program
32 approved by the State Treasurer.

33 (cf: P.L.1991, c.519, s.12)

34

35 14. Section 3 of P.L.1975, c.127 (C.10:5-33) is amended to read
36 as follows:

37 3. The State or any county or municipality or other political
38 subdivision of the State, or any agency of or authority created by
39 any of the foregoing, shall include in the bid specifications and the
40 contract provisions of any public works contract the following
41 language:

42 "During the performance of this contract, the contractor agrees as
43 follows:

44 a. The contractor or subcontractor, where applicable, will not
45 discriminate against any employee or applicant for employment
46 because of age, race, creed, color, national origin, ancestry, marital
47 status, affectional or sexual orientation, gender identity or
48 expression, disability, nationality or sex. Except with respect to

1 affectional or sexual orientation and gender identity or expression,
2 the contractor will take affirmative action to ensure that such
3 applicants are recruited and employed, and that employees are
4 treated during employment, without regard to their age, race, creed,
5 color, national origin, ancestry, marital status, affectional or sexual
6 orientation, gender identity or expression, disability, nationality or
7 sex. Such action shall include, but not be limited to the following:
8 employment, upgrading, demotion, or transfer; recruitment or
9 recruitment advertising; layoff or termination; rates of pay or other
10 forms of compensation; and selection for training, including
11 apprenticeship. The contractor agrees to post in conspicuous
12 places, available to employees and applicants for employment,
13 notices to be provided by the contracting officer setting forth the
14 provisions of this nondiscrimination clause;

15 b. The contractor or subcontractor, where applicable will, in all
16 solicitations or advertisements for employees placed by or on behalf
17 of the contractor, state that all qualified applicants will receive
18 consideration for employment without regard to age, race, creed,
19 color, national origin, ancestry, marital status, affectional or sexual
20 orientation, gender identity or expression, disability, nationality or
21 sex;

22 c. The contractor or subcontractor where applicable, will send
23 to each labor union or representative of workers with which he has
24 a collective bargaining agreement or other contract or
25 understanding, a notice, to be provided by the agency contracting
26 officer, advising the labor union or workers' representative of the
27 contractor's commitments under this act and shall post copies of the
28 notice in conspicuous places available to employees and applicants
29 for employment."

30 In soliciting bids for any public works contract the State or any
31 county or municipality or other political subdivision of the State, or
32 any agency of or authority created by any of the foregoing, shall
33 include in the advertisement and solicitation of bids the following
34 language: "Bidders are required to comply with the requirements of
35 P.L.1975, c.127."

36 (cf: P.L.2003, c.180, s.25)

37

38 15. Section 4 of P.L.1975, c.127 (C.10:5-34) is amended to read
39 as follows:

40 4. Each prospective bidder on a public works contract or
41 contracts and each subcontract bidder to a prime contract bidder
42 shall formulate and submit to the State Treasurer his or its
43 affirmative action program of equal opportunity whereby he or it
44 guarantees minorities employment in all employment categories;
45 the submission shall be accompanied by a fee in an amount to be
46 fixed by the State Treasurer. For the purposes of this section, equal
47 employment opportunity but not affirmative action is required with
48 respect to persons identified solely by their affectional or sexual

1 orientation and gender identity or expression. The State Treasurer
2 shall notify the bidder of approval or disapproval of his or its
3 program within 60 days of its submission; failure of the State
4 Treasurer to so act within 60 days shall constitute approval of the
5 program. Any existing federally approved or sanctioned affirmative
6 action program shall be approved by the State Treasurer.

7 No subcontract bidder who has less than five employees need
8 comply with the provisions of this section.

9 (cf: P.L.1991, c.519, s.14)

10

11 16. (New section) a. Nothing in P.L. , c. (C.)(now pending
12 before this Legislature as this bill) shall affect the ability of an
13 employer to require employees to adhere to reasonable workplace
14 appearance, grooming, and dress standards not precluded by other
15 provisions of State or federal law, provided that an employer must
16 allow an employee to appear, groom, and dress consistently with the
17 employee's gender identity or expression.

18 b. For the purposes of P.L. , c. (C.)(now pending before this
19 Legislature as this bill), a person shall be admitted to housing,
20 facilities and accommodations based on their gender identity or
21 expression, unless the Division of Civil Rights grants an exemption.

22

23 17. This act shall take effect on the 180th day following
24 enactment.

25

26

27

STATEMENT

28

29 This bill would amend the "Law Against Discrimination" (LAD)
30 to specify that gender identity or expression is a protected class
31 against discrimination.

32 In the recent New Jersey Appellate Division case, Enriquez v.
33 West Jersey Health Systems, 342 N.J.Super. 501 (2001), that court
34 held that gender dysphoria or transsexualism is a handicap under
35 the New Jersey's LAD and that the LAD precludes an employer
36 from discriminating against a person based on that person's sexual
37 identity or gender. In that case the plaintiff sued her employer for
38 wrongful termination of employment because she lost her position
39 as a medical director at an outpatient treatment facility after she
40 began her external transformation from a male to a female and prior
41 to her undergoing sex reassignment surgery. The plaintiff was
42 diagnosed with a "gender identity disorder." The trial judge
43 dismissed the complaint noting that the plaintiff could not bring the
44 a claim for sexual orientation discrimination under the LAD. The
45 Appellate Division concluded that, " . . . sex discrimination under
46 the LAD includes gender discrimination so as to protect plaintiff
47 from gender stereotyping and discrimination from transforming
48 herself from a man to a woman." Id. at 516. The court stated that,

1 "It is incomprehensible to us that our Legislature would ban
2 discrimination against heterosexual men and women; against
3 homosexual men and women; against bisexual men and women;
4 against men and women who are perceived, presumed or identified
5 by others as not conforming to the stereotypical notions of how men
6 and women behave, but would condone discrimination against men
7 or women who seek to change their anatomical sex because they
8 suffer from a gender identity disorder. We conclude that sex
9 discrimination under the LAD includes gender discrimination so as
10 to protect plaintiff from gender stereotyping and discrimination for
11 transforming herself from a man to a woman." *Id.* at 515.
12 (Emphasis added.). The court reversed the judge's assessment that a
13 claim for gender dysphoria could not be a handicap under the LAD.
14 The court remanded the plaintiff's gender discrimination claim. *Id.*
15 at 523.

16 This bill would codify the court's reasoning in the *Enriquez*
17 decision and expand the provisions of the LAD to include
18 discrimination on the basis of gender identity or expression. The
19 bill would define "gender identity or expression" as "having or
20 being perceived as having a gender related identity or expression
21 whether or not stereo typically associated with a person's assigned
22 sex at birth." This definition is intended to cover everyone whether
23 they have a typical or non-typical gender identity and expression
24 and is consistent with case law that held any discrimination based
25 on gender stereotypes is prohibited by the LAD.

26 The bill provides that the provisions of the bill would not
27 preclude an employer from requiring employees to adhere to
28 reasonable workplace appearance, grooming and dress standards,
29 provided that an employer allows an employee to dress in a manner
30 consistent with the employee's gender identity.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 930

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2006

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 930.

This bill would amend the "Law Against Discrimination" (LAD) to specify that gender identity or expression is a protected class against discrimination.

In the New Jersey Appellate Division case, Enriquez v. West Jersey Health Systems, 342 N.J.Super. 501 (2001) cert. den. 170 N.J.211 (2001), that court held that gender dysphoria or transsexualism is a handicap under the New Jersey's LAD and that the LAD precludes an employer from discriminating against a person based on that person's sexual identity or gender. In that case the plaintiff sued her employer for wrongful termination of employment because she lost her position as a medical director at an outpatient treatment facility after she began her external transformation from a male to a female and prior to her undergoing sex reassignment surgery. The plaintiff was diagnosed with a "gender identity disorder." The trial judge dismissed the complaint noting that the plaintiff could not bring the a claim for sexual orientation discrimination under the LAD. However, the Appellate Division concluded that "[S]ex discrimination under the LAD includes gender discrimination so as to protect plaintiff from gender stereotyping and discrimination from transforming herself from a man to a woman." Id. at 516. The court stated that, "It is incomprehensible to us that our Legislature would ban discrimination against heterosexual men and women; against homosexual men and women; against bisexual men and women; against men and women who are perceived, presumed or identified by others as not conforming to the stereotypical notions of how men and women behave, but would condone discrimination against men or women who seek to change their anatomical sex because they suffer from a gender identity disorder. We conclude that sex discrimination under the LAD includes gender discrimination so as to protect plaintiff from gender stereotyping and discrimination for transforming herself from a man to a woman." Id. at 515. (Emphasis added.). The court reversed the assessment of the trial court that a claim for gender dysphoria could

not be a handicap under the LAD and remanded the plaintiff's gender discrimination claim. *Id.* at 523.

This bill would codify the court's reasoning in the *Enriquez* decision and expand the provisions of the LAD to include discrimination on the basis of gender identity or expression. The bill would define "gender identity or expression" as "having or being perceived as having a gender related identity or expression whether or not stereo typically associated with a person's assigned sex at birth." This definition is intended to cover everyone whether they have a typical or non-typical gender identity and expression and is consistent with case law that held that any discrimination based on gender stereotypes is prohibited by the LAD.

The committee amended the bill to delete section 16 and place the substance of that section into the appropriate amendatory section which is N.J.S.A.10:5-12 (section 9 of the bill). The amendments move the provision concerning access to housing, facilities and accommodations from subsection b. of section 16 of the bill to subsection f. (1), subsection g. (3) and subsection h. (3) of N.J.S.A.10:5-12. The provision concerning the employee's adherence to reasonable dress standards is moved from subsection a. of section 16 to become a new subsection p. of N.J.S.A.10:5-12.

This bill was prefiled for introduction in the 2006 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

COMMITTEE AMENDMENTS

1. Deletes section 16 of the bill and moves those provisions to section 9 of the bill.

2. Amends section 9 of the bill by adding provisions concerning access to housing, facilities and accommodations from subsection b. of section 16 of the bill to subsection f. (1), subsection g. (3) and subsection h. (3) of N.J.S.A.10:5-12. The provision concerning the employee's adherence to reasonable dress standards was moved from subsection a. of section 16 to become a new subsection p. of N.J.S.A.10:5-12.

Dec-19-06 Governor Corzine Signs Legislation to Add Gender Identity, Expression as a Protected Class Against Discrimination

FOR IMMEDIATE RELEASE
DATE: December 19, 2006

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GOVERNOR CORZINE SIGNS LEGISLATION TO ADD GENDER IDENTITY, EXPRESSION AS A PROTECTED CLASS AGAINST DISCRIMINATION

TRENTON - Governor Jon S. Corzine today signed legislation that amends the New Jersey Law Against Discrimination (NJ-LAD) by adding "gender identity or expression" to the list of protected characteristics.

A characteristic protected under the NJ-LAD is one that cannot lawfully be used as a basis for employment, housing, public accommodation, and similar decisions.

"The New Jersey Law Against Discrimination is one of the most powerful tools we have in government to protect our citizens," said Governor Corzine. "I am pleased to sign legislation to ensure gender identity or expression is a protected class against discrimination in New Jersey."

The legislation (S362) was sponsored by Senators Ellen Karcher and Joseph F. Vitale, and Assemblymembers Reed Gusciora, John F. McKeon, Bonnie Watson Coleman, and Joseph Vas.

The legislation takes effect in 180 days.

The Governor also signed legislation (S462) that requires independent contractors to submit to background checks to work within certain industries. The bill was sponsored by Senators Stephen M. Sweeney, John H. Adler and Barbara Buono, and Assemblymembers John J. Burzichelli, Douglas H. Fisher, and Neil M. Cohen.