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"The Latest: Group pushes back against Christie criticism," Associated Press State Wire: New Jersey, January 8, 2018

"Christie signs bill to prohibit breastfeeding discrimination," Associated Press State Wire: New Jersey, January 8, 2018

"Christie signs law protecting breastfeeding workers," courierpostonline.com, January 8, 2018

"Christie signs law declaring breastfeeding must be allowed at work," nj.com, January 8, 2018

"Law protects nursing mothers in workplace," The Star-Ledger, January 9, 2018

"Breastfeeding mothers gain new rights at work under new law, NJBIZ, January 11, 2018

"New year brings new breastfeeding civil rights protections to New Jersey working women," The Press of Atlantic City, January 13, 2018

RH/CL

P.L.2017, CHAPTER 263, *approved January 8, 2018*

Assembly, No. 2294

1 AN ACT concerning breastfeeding and amending P.L.1945, c.169.

2

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

5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
43 sale, rental, lease, assignment, or sublease any real property or part
44 or portion thereof to any person or group of persons or to refuse to
45 negotiate for the sale, rental, lease, assignment, or sublease of any
46 real property or part or portion thereof to any person or group of
47 persons because of race, creed, color, national origin, ancestry,
48 marital status, civil union status, domestic partnership status,

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

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

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

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

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

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

21 (1) To discriminate against any person or group of persons
22 because of race, creed, color, national origin, ancestry, marital
23 status, civil union status, domestic partnership status, pregnancy or
24 breastfeeding, sex, gender identity or expression, affectional or
25 sexual orientation, disability, familial status or nationality, in the
26 granting, withholding, extending, modifying, renewing, or
27 purchasing, or in the fixing of the rates, terms, conditions or
28 provisions of any such loan, extension of credit or financial
29 assistance or purchase thereof or in the extension of services in
30 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, civil union status, domestic
37 partnership status, pregnancy or breastfeeding, sex, gender identity
38 or expression, affectional or sexual orientation, disability, familial
39 status or nationality or any intent to make any such limitation,
40 specification or discrimination; unless otherwise required by law or
41 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
7 scope of this act to refuse to post or display such notices concerning
8 the 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
11 employee or agent thereof or any other individual, corporation,
12 partnership, or organization, for the purpose of inducing a
13 transaction for the sale or rental of real property from which
14 transaction such person or any of its members may benefit
15 financially, to represent that a change has occurred or will or may
16 occur in the composition with respect to race, creed, color, national
17 origin, ancestry, marital status, civil union status, domestic
18 partnership status, familial status, pregnancy or breastfeeding, sex,
19 gender identity or expression, affectional or sexual orientation,
20 disability, nationality, or source of lawful income used for rental or
21 mortgage payments of the owners or occupants in the block,
22 neighborhood or area in which the real property is located, and to
23 represent, directly or indirectly, that this change will or may result
24 in undesirable consequences in the block, neighborhood or area in
25 which the real property is located, including, but not limited to the
26 lowering of property values, an increase in criminal or anti-social
27 behavior, or a decline in the quality of schools or other facilities.

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

45 m. For any person to:

46 (1) Grant or accept any letter of credit or other document which
47 evidences the transfer of funds or credit, or enter into any contract
48 for the exchange of goods or services, where the letter of credit,

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

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

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

25 n. For any person to aid, abet, incite, compel, coerce, or induce
26 the doing of any act forbidden by subsections l. and m. of section
27 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
28 do so. Such prohibited conduct shall include, but not be limited to:

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

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

43 o. For any multiple listing service, real estate brokers'
44 organization or other service, organization or facility related to the
45 business of selling or renting dwellings to deny any person access
46 to or membership or participation in such organization, or to
47 discriminate against such person in the terms or conditions of such
48 access, membership, or participation, on account of race, creed,

1 color, national origin, ancestry, age, marital status, civil union
2 status, domestic partnership status, familial status, pregnancy or
3 breastfeeding, sex, gender identity or expression, affectional or
4 sexual orientation, disability or nationality.

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

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

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

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

34 (2) For an employer to refuse to permit an employee to utilize
35 leave, as provided for in this subsection q., which is solely used to
36 accommodate the employee's sincerely held religious observance or
37 practice. Except where it would cause an employer to incur an
38 undue hardship, no person shall be required to remain at his place
39 of employment during any day or days or portion thereof that, as a
40 requirement of his religion, he observes as his Sabbath or other holy
41 day, including a reasonable time prior and subsequent thereto for
42 travel between his place of employment and his home; provided that
43 any such absence from work shall, wherever practicable in the
44 reasonable judgment of the employer, be made up by an equivalent
45 amount of time and work at some other mutually convenient time,
46 or shall be charged against any leave with pay ordinarily granted,
47 other than sick leave, and any such absence not so made up or

1 charged, may be treated by the employer of that person as leave
2 taken without pay.

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

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

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

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

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

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

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

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

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

1 any authorized representative of the other employee or former
2 employee.

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

33 For the purposes of this section "pregnancy or breastfeeding"
34 means pregnancy, childbirth, and breast feeding or expressing milk
35 for breastfeeding, or medical conditions related to pregnancy, **[or]**
36 childbirth, or breastfeeding, including recovery from childbirth.

37 For the purposes of this subsection, in determining whether an
38 accommodation would impose undue hardship on the operation of
39 an employer's business, the factors to be considered include: the
40 overall size of the employer's business with respect to the number
41 of employees, number and type of facilities, and size of budget; the
42 type of the employer's operations, including the composition and
43 structure of the employer's workforce; the nature and cost of the
44 accommodation needed, taking into consideration the availability of
45 tax credits, tax deductions, and outside funding; and the extent to
46 which the accommodation would involve waiver of an essential
47 requirement of a job as opposed to a tangential or non-business

1 necessity requirement.
2 (cf: P.L.2013, c.220, s.2)

3
4 2. This act shall take effect immediately.

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STATEMENT

9 This bill expands certain civil rights protections under the "Law
10 Against Discrimination" P.L.1945, c.169 (C.10:5-1 et seq.) to
11 include breastfeeding and expressing milk or related medical
12 conditions. Under this bill, it would be a civil rights violation for a
13 working woman to be fired or otherwise discriminated against
14 because of breastfeeding or expressing her milk during breaks.

15 The bill also requires an employer to provide reasonable break
16 time each day and a suitable location for an employee who is
17 breastfeeding to express her milk in private.

18
19
20
21

22 Expands civil rights protections to include breastfeeding;
23 requires employers to provide reasonable accommodations for
24 breastfeeding mothers.

ASSEMBLY, No. 2294

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 4, 2016

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

Assemblywoman ELIZABETH MAHER MUOIO

District 15 (Hunterdon and Mercer)

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator M. TERESA RUIZ

District 29 (Essex)

Co-Sponsored by:

Assemblywomen Pinkin and Mosquera

SYNOPSIS

Expands civil rights protections to include breastfeeding; requires employers to provide reasonable accommodations for breastfeeding mothers.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 12/19/2017)

1 AN ACT concerning breastfeeding and amending P.L.1945, c.169.

2

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

5

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

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

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

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 retirement benefit from a pension, profit sharing, savings or
2 deferred retirement plan, or any combination of those plans, of the
3 employer of that employee which equals in the aggregate at least
4 \$27,000.00; and provided further that an employer may restrict
5 employment to citizens of the United States where such restriction
6 is required by federal law or is otherwise necessary to protect the
7 national interest.

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

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

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

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

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

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

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

1 restaurant as defined in R.S.33:1-1 or place where alcoholic
2 beverages are served.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
47 to deny to or withhold from any person or group of persons any real
48 property or part or portion thereof because of the source of any

1 lawful income received by the person or the source of any lawful
2 rent payment to be paid for the real property; or

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

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

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

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

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

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

44 (5) To discriminate against any person or group of persons
45 because that person's family includes children under 18 years of
46 age, or to make an agreement or mortgage which provides that the
47 agreement or mortgage shall be rendered null and void upon the
48 birth of a child. This paragraph shall not apply to housing for older

1 persons as defined in subsection mm. of section 5 of P.L.1945,
2 c.169 (C.10:5-5).

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

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

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

42 m. For any person to:

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

1 national origin, ancestry, age, pregnancy or breastfeeding, sex,
2 gender identity or expression, affectional or sexual orientation,
3 marital status, civil union status, domestic partnership status,
4 disability, liability for service in the Armed Forces of the United
5 States, or nationality of such other person or of such other person's
6 spouse, partners, members, stockholders, directors, officers,
7 managers, superintendents, agents, employees, business associates,
8 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, civil union
47 status, domestic partnership status, familial status, pregnancy or

1 breastfeeding, sex, gender identity or expression, affectional or
2 sexual orientation, disability or nationality.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 r. For any employer to take reprisals against any employee for
34 requesting from any other employee or former employee of the
35 employer information regarding the job title, occupational category,
36 and rate of compensation, including benefits, of any employee or
37 former employee of the employer, or the gender, race, ethnicity,
38 military status, or national origin of any employee or former
39 employee of the employer, regardless of whether the request was
40 responded to, if the purpose of the request for the information was
41 to assist in investigating the possibility of the occurrence of, or in
42 taking of legal action regarding, potential discriminatory treatment
43 concerning pay, compensation, bonuses, other compensation, or
44 benefits. Nothing in this subsection shall be construed to require an
45 employee to disclose such information about the employee herself
46 to any other employee or former employee of the employer or to
47 any authorized representative of the other employee or former
48 employee.

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

31 For the purposes of this section "pregnancy or breastfeeding"
32 means pregnancy, childbirth, and breast feeding or expressing milk
33 for breastfeeding, or medical conditions related to pregnancy, **[or]**
34 childbirth, or breastfeeding, including recovery from childbirth.

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

47 (cf: P.L.2013, c.220, s.2)

1 2. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill expands certain civil rights protections under the "Law
7 Against Discrimination" P.L.1945, c.169 (C.10:5-1 et seq.) to
8 include breastfeeding and expressing milk or related medical
9 conditions. Under this bill, it would be a civil rights violation for a
10 working woman to be fired or otherwise discriminated against
11 because of breastfeeding or expressing her milk during breaks.

12 The bill also requires an employer to provide reasonable break
13 time each day and a suitable location for an employee who is
14 breastfeeding to express her milk in private.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2294

STATE OF NEW JERSEY

DATED: OCTOBER 13, 2016

The Assembly Labor Committee reports favorably Assembly Bill No. 2294.

This bill expands certain civil rights protections under the "Law Against Discrimination" P.L.1945, c.169 (C.10:5-1 et seq.) to include breastfeeding and expressing milk or related medical conditions. Under this bill, it would be a civil rights violation for a working woman to be fired or otherwise discriminated against because of breastfeeding or expressing her milk during breaks.

The bill also requires an employer to provide reasonable break time each day and a suitable location for an employee who is breastfeeding to express her milk in private.

SENATE, No. 2709

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED OCTOBER 20, 2016

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator M. TERESA RUIZ

District 29 (Essex)

SYNOPSIS

Expands civil rights protections to include breastfeeding; requires employers to provide reasonable accommodations for breastfeeding mothers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/10/2016)

S2709 WEINBERG, RUIZ

2

1 AN ACT concerning breastfeeding and amending P.L.1945, c.169.

2

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

5

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

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

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

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

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

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

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

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

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

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

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

1 restaurant as defined in R.S.33:1-1 or place where alcoholic
2 beverages are served.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
47 to deny to or withhold from any person or group of persons any real
48 property or part or portion thereof because of the source of any

1 lawful income received by the person or the source of any lawful
2 rent payment to be paid for the real property; or

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

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

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

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

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

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

44 (5) To discriminate against any person or group of persons
45 because that person's family includes children under 18 years of
46 age, or to make an agreement or mortgage which provides that the
47 agreement or mortgage shall be rendered null and void upon the
48 birth of a child. This paragraph shall not apply to housing for older

1 persons as defined in subsection mm. of section 5 of P.L.1945,
2 c.169 (C.10:5-5).

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

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

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

42 m. For any person to:

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

1 national origin, ancestry, age, pregnancy or breastfeeding, sex,
2 gender identity or expression, affectional or sexual orientation,
3 marital status, civil union status, domestic partnership status,
4 disability, liability for service in the Armed Forces of the United
5 States, or nationality of such other person or of such other person's
6 spouse, partners, members, stockholders, directors, officers,
7 managers, superintendents, agents, employees, business associates,
8 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, civil union
47 status, domestic partnership status, familial status, pregnancy or

1 breastfeeding, sex, gender identity or expression, affectional or
2 sexual orientation, disability or nationality.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 r. For any employer to take reprisals against any employee for
34 requesting from any other employee or former employee of the
35 employer information regarding the job title, occupational category,
36 and rate of compensation, including benefits, of any employee or
37 former employee of the employer, or the gender, race, ethnicity,
38 military status, or national origin of any employee or former
39 employee of the employer, regardless of whether the request was
40 responded to, if the purpose of the request for the information was
41 to assist in investigating the possibility of the occurrence of, or in
42 taking of legal action regarding, potential discriminatory treatment
43 concerning pay, compensation, bonuses, other compensation, or
44 benefits. Nothing in this subsection shall be construed to require an
45 employee to disclose such information about the employee herself
46 to any other employee or former employee of the employer or to
47 any authorized representative of the other employee or former
48 employee.

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

31 For the purposes of this section "pregnancy or breastfeeding"
32 means pregnancy, childbirth, and breast feeding or expressing milk
33 for breastfeeding, or medical conditions related to pregnancy, **[or]**
34 childbirth, or breastfeeding, including recovery from childbirth.

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

47 (cf: P.L.2013, c.220, s.2)

1 2. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill expands certain civil rights protections under the "Law
7 Against Discrimination" P.L.1945, c.169 (C.10:5-1 et seq.) to
8 include breastfeeding and expressing milk or related medical
9 conditions. Under this bill, it would be a civil rights violation for a
10 working woman to be fired or otherwise discriminated against
11 because of breastfeeding or expressing her milk during breaks.

12 The bill also requires an employer to provide reasonable break
13 time each day and a suitable location for an employee who is
14 breastfeeding to express her milk in private.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2709

STATE OF NEW JERSEY

DATED: DECEMBER 4, 2017

The Senate Labor Committee reports favorably Senate Bill No. 2709.

This bill expands certain civil rights protections under the "Law Against Discrimination" P.L.1945, c.169 (C.10:5-1 et seq.) to include breastfeeding and expressing milk or related medical conditions. Under this bill, it would be a civil rights violation for a working woman to be fired or otherwise discriminated against because of breastfeeding or expressing her milk during breaks.

The bill also requires an employer to provide reasonable break time each day and a suitable location for an employee who is breastfeeding to express her milk in private.