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STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

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SYNOPSIS
Establishes procedure for certification of LGBTQ+ business.

CURRENT VERSION OF TEXT
As amended by the General Assembly on March 18, 2024.

AN ACT ¹[establishing a] concerning the¹ certification ¹[program for] of¹ businesses owned by LGBTQ+ persons¹[,]¹ and supplementing Title 52 of the Revised Statutes.

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

¹[1. As used in this act:

“Appeal” means a filed written challenge to a denial or revocation of a certification as an LGBTQ+ business.

“Applicant” means a business that applies for certification as an LGBTQ+ business pursuant to this act.

“Business” means an entity organized for profit which includes, but is not limited to, a sole proprietorship, partnership, limited liability company, corporation, or joint venture.

“Certification” means a determination by the division that an applicant has met the standards for certification as an LGBTQ+ business, pursuant to section 2 of this act.

“Control and managerial and operational control” mean authority over the affairs of a business, including, but not limited to, capital investment, property acquisition, employee hiring, contract negotiations, legal matters, officer and director selection, operating responsibility, financial transaction, and the rights of other shareholders or joint partners. Control shall not include absentee ownership. Control shall be deemed not to exist where an owner does not identify as LGBTQ+. Additionally, control shall not be deemed to exist if someone, other than someone who identifies as LGBTQ+, is disproportionately responsible for the daily operation of a business, or for policy and contractual decisions.

“Day” or “business day” means any weekday, excluding Saturdays, Sundays, State or federal legal holidays, and State-mandated furlough days.

“Denial” means an administrative decision by the division to reject an application pursuant to section 7 of this act.

“Department” means the Department of the Treasury.

“Designated hearing officer” means a Department of the Treasury employee designated by the State Treasurer to render decisions on cases involving an appeal of a denial of a certification or a challenge to a certification, pursuant to this act.

“Director” means the director of the Division of Revenue and Enterprise Services, in the Department of the Treasury.

“Division” means the Division of Revenue and Enterprise Services, in the Department of the Treasury.

“E.O. 295” means Executive Order No. 295 (2022), issued by Governor Murphy on May 3, 2022.

“Filed” means received by the director or a division representative.

“Joint venture” means a business undertaking between two or more entities who share risk and responsibility for a specific project while otherwise retaining their distinct identities.

“LGBTQ+” means lesbian, gay, bisexual, transgender, queer, questioning +, or other gender identities and sexual orientations that are non-cisgender and non-heterosexual.

“LGBTQ+ business” means a business, which is:

(1) a sole proprietorship, owned and controlled by a person who identifies as LGBTQ+;

(2) a partnership or joint venture, in which at least 51 percent of the ownership interest is held by individuals who identify as LGBTQ+ and the management and daily business operations are controlled by one or more of the individuals who identify as LGBTQ+; or

(3) a corporation or other entity, whose management and daily business operations are controlled by one or more individuals who identify as LGBTQ+ which is at least 51 percent owned by one or more individuals who identify as LGBTQ+ or, if stock is issued, at least 51 percent of the stock is owned by one or more individuals who identify as LGBTQ+.

“Selective Assistance Vendor Information (SAVI)” means the database in which the division maintains a public listing of small businesses, veteran’s businesses, disabled veteran-owned businesses, minority, women, and LGBTQ+ businesses.

“State contracting agency” or “contracting agency” means any board, commission, committee, authority, division, college, university, department, or agency of the State that possesses the legal authority to enter into, or award, contracts for goods and services or construction contracts.]¹

¹[2. a. A business may be eligible to be certified as an LGBTQ+ business, as set forth in this section.

b. In order to be eligible as an LGBTQ+ business, a business shall be a sole proprietorship, partnership, joint venture, corporation, or other business entity authorized pursuant to the laws of the United States, which is at least 51 percent owned, operated, and controlled by persons who identify as LGBTQ+.

c. In order to be eligible to be certified, a business shall meet the following standards to be certified as an LGBTQ+ business:

(1) ownership. A business shall be deemed to be independently owned, operated, and controlled, if its management, as specified in its certification application, is responsible for both its daily and long-term operation, and that

management owns at least 51 percent interest in the business and consists of individuals who identify as LGBTQ+. The ownership and control by members of the LGBTQ+ community shall be real, substantial, and continuing, demonstrating authority over the affairs of the business, and shall go beyond the pro forma ownership of the business as reflected in its ownership documents;

(2) business entity. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an LGBTQ+ business. In determining whether a potential LGBTQ+ business is an independent business, all relevant factors shall be considered, including the date the business was established and the degree to which financial, equipment leasing, and other relationships with non-LGBTQ+ businesses vary from industry practice;

(3) licensing. When a professional or occupational license or certification is required by federal or State law to perform the primary business operations of the applicant business, and the LGBTQ+ business does not possess the applicable license or certification, the LGBTQ+ owner shall demonstrate competence in the affairs of the business, in order to satisfy the requirement for managerial and operational control; and

(4) registration. A business shall be registered with the division to do business in New Jersey.¹

¹[3. a. The documentation required for first-time applicants seeking certification may be abbreviated. The documentation requirements in this section shall only apply to first-time applicants for certification.

b. A first-time applicant for certification as an LGBTQ+ business shall submit documentation necessary to determine the applicant's eligibility for certification.

c. The division shall prepare a New Jersey Uniform Certification Application. The application shall be an online application available from the division's Internet website. The information submitted in support of an application shall include, but not be limited to:

(1) the names and addresses of the owner, partners, or shareholders, as applicable, and their representative shares of ownership;

(2) the names and addresses of members of the board of directors;

(3) the names and addresses of the officers of the business;

(4) the number of shares of stock issued and outstanding, in the case of a corporation;

(5) the articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable;

(6) organizational charts;

(7) the certificate of birth, or motor vehicle driver's license, passport, or other acceptable form of identification of the owners, partners, shareholders, or in the case of corporations, members of the board of directors, as applicable to the applicant entity; and

(8) an affidavit, signed by the individual seeking certification, certifying that the signer owns the business and identifies as LGBTQ+. In the case of a business with multiple owners, a single affidavit certifying that at least 51 percent of ownership identifies as LGBTQ+ shall be sufficient.

d. A first-time applicant's certification shall be provisional and shall be operative for one year from the date of approval. Following an initial certification year, a business shall reapply for certification no later than 20 days prior to the expiration of the business's current certification, and not earlier than 60 days prior to the expiration of that certification.

(1) The division shall prepare an application form for recertification. The application shall be an online application available on the division's Internet website.

(2) As part of its recertification application to the division, a business shall provide in its application, in addition to the information required pursuant to subsection c. of this section:

(a) the location of its business;

(b) the names and addresses of the officers of the business;

(c) the names and addresses of capital investors and the amount of capital contributed. Gifted ownership shall not be considered;

(d) personal and corporate tax returns for each owner, director, and officer of the business for the past three consecutive years (including W-2 forms);

(e) the bonding capacity and history of the business;

(f) the affiliation of the business or any of its owners, officers, or directors with any other business entity;

(g) a current organizational chart;

(h) a representative list of current and prior clients for the past two years, where applicable;

(i) a complete list of major real and personal property holdings of the business;

(j) a complete disclosure of financial statements and balance sheets;

(k) a complete listing of banking institutions with which the business is affiliated;

(l) a complete listing of previously attained certifications and a listing of all legal entities that denied certification, including but not limited to certification as a small business,

veteran's business, disabled veteran-owned business, minority business, or women's business; and

(m) copies of office or warehouse lease or rental agreements, deeds, and mortgages.

(3) Upon approval of an application, a certificate issued pursuant to this section shall be valid for five years, subject to the annual certification verification statement. Every five years thereafter, but no later than 20 days prior to the expiration of the business's current certification, and not earlier than 60 days prior to the expiration of the certification, a business interested in remaining certified as an LGBTQ+ business shall comply with the certification procedures in this subsection.

(4) An applicant shall fully and accurately complete all relevant parts of the Uniform Certification Application. Failure to complete an application may result in denial.

(5) Annually, the business shall submit, not more than 20 days prior to the anniversary of the certification, an annual Certification Verification Statement, in which it shall attest that there is no change in the ownership, control, or any other factor of the business affecting eligibility for certification as an LGBTQ+ business.

e. (1) If the business fails to submit the annual certification verification statement by the anniversary date, the certification will lapse and the business shall be removed from the SAVI. If the business seeks to be re-certified, it shall reapply for certification pursuant to subsection d. of this section.

(2) If the business submits the annual Certification Verification Statement by the anniversary date, but either the Certification Verification Statement or other information received by the division indicates that the business is no longer eligible for certification as an LGBTQ+ business, the division shall revoke the certification pursuant to this section and, following revocation, the business shall be removed from the SAVI. The business may appeal this revocation, pursuant to the procedures established by the division.

f. Grounds for denial of an application pursuant to this section shall be as follows:

(1) in the event that the division, after reviewing the application, requests additional information or documentation that is necessary to make a determination, the applicant's failure to comply with the request within 30 days of the request shall result in denial; and

(2) if the applicant knowingly supplies incorrect, incomplete, or inaccurate information, the applicant shall be disqualified and barred from reapplying for certification for a period of 18 months from the date of notice of disqualification.]¹

¹[4. a. When a business is determined by the division to be an LGBTQ+ business, the business shall be added to the SAVI database. Each business shall be placed on the database denoting its status as an LGBTQ+ business.

b. When a business is placed on the SAVI database:

(1) that business shall be eligible for any appropriate State programs and initiatives for LGBTQ+ businesses; and

(2) the business shall be informed by the division of its certification status. The division shall also issue an individual certification number exclusive to the business, as part of the certification procedure.]¹

¹[5. An LGBTQ+ business may apply to be certified by the division at any time, unless restricted pursuant to this act.]¹

¹[6. An applicant for certification as an LGBTQ+ business may request, in writing, to the director, that its application be withdrawn. A requested withdrawal shall not be prejudicial to any subsequent application. An applicant may reapply not sooner than 90 calendar days following the date of withdrawal, but not more than three times in a calendar year. An applicant may withdraw once during a 12-month period.]¹

¹[7. a. The division may deny or revoke the certification of an LGBTQ+ business if the division has determined that:

- (1) the applicant has failed to meet certification criteria;
- (2) the business has ceased to meet certification criteria;
- (3) the applicant has not timely renewed its certification; or
- (4) the applicant has knowingly provided incorrect or false information.

b. When a determination to deny or revoke a certification is made, the division shall notify the business through the mail or electronic means, including electronic mail. The denial or revocation shall be effective as of the date of the notice.

c. An LGBTQ+ business challenging the denial or revocation shall submit an appeal to the director or designated hearing officer setting forth, in detail, the grounds for such appeal in a written statement. The appeal shall be filed within 10 business days following the business's receipt of written notification that it was denied certification, or that its certification was revoked. The appeal shall contain:

(1) the specific grounds for challenging the denial of the certification or the revocation of the certification, including all arguments, materials, or other documentation that may support the appellant's position; and

(2) a statement as to whether the appellant requests an opportunity for an in-person presentation and the reason(s) for the request.

d. The director, or designated hearing officer, may disregard any appeal filed after the 10-day period.

e. The appeal accepted by the director or designated hearing officer shall be resolved pursuant to the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.). The determination issued by the director, or designated hearing officer, shall be a final agency decision, which shall be appealable to the Appellate Division of the Superior Court.

f. The director, or designated hearing officer, is entitled to request, receive, and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the appeal. Upon receipt of the request by the director or designated hearing officer, a business shall promptly provide the requested records or information. The director or designated hearing officer may also consider relevant information requested and received from other parties deemed appropriate.

g. A business who receives a decision from the division that the denial or revocation has been reaffirmed may reapply for certification one year after the original date of denial or revocation.]¹

¹[8. a. A third-party may challenge the qualifications of an applicant, or a certified entity, pursuant to this act for eligibility to be certified as an LGBTQ+ business and be included in the SAVI database.

b. A third-party finding cause to challenge the certification of an LGBTQ+ business shall submit an appeal to the director, or designated hearing officer, setting forth, in detail, the grounds for the challenge in a written statement with copies to the challenged business. The challenge shall contain the specific grounds for challenging the certification, including all arguments, materials, or other documentation that may support the challenger's position. A challenge pursuant to this subsection is limited to the authenticity of a business pursuant to this act to be certified as an LGBTQ+ business. The right to challenge a currently certified LGBTQ+ business is in addition to, and independent of, any protest hearing rights that are afforded by any State contracting agency.

c. When the division, or designated hearing officer, receives a challenge, the division shall notify the affected business in writing.

d. (1) Upon proper notice, the division or designated hearing officer shall conduct a hearing on the matter pursuant to the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.). The determination issued by the director, or designated hearing officer, shall be a final agency decision, which shall be appealable to the Appellate Division of the Superior Court;

(2) The director, or designated hearing officer, is entitled to request, receive, and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the challenge. Upon receipt of the request by the director or designated hearing officer, the business shall promptly provide the requested records or information. The director, or designated hearing officer, may also consider relevant information requested and received from other parties deemed appropriate; and

(3) A business who receives a decision from the director, or designated hearing officer, that the certification has been revoked may reapply for certification one year after the date of revocation.]¹

¹[9. a. Applicants for certification pursuant to this act shall accurately and honestly supply all information required by the division.

b. Any business certified by the division as an LGBTQ+ business shall immediately apprise the division of any circumstances that in any way affect the ownership composition of the business, or the control over the business, or otherwise affect the eligibility of the business, pursuant to this act.

c. The failure of a business to report any changed circumstances pursuant to subsection b. of this section, or the falsification of information provided pursuant to subsection b. of this section, shall disqualify the business for inclusion on the SAVI database. When the division determines that a business has been certified as an LGBTQ+ business on the basis of false information, the division shall notify the business that it has been removed from the SAVI database.

d. The certificate holder shall have 10 business days to file a notice of appeal with the director or designated hearing officer. The notice of appeal shall provide the specific grounds for appealing the determination, including all relevant information.

e. Receipt of a proper appeal shall constitute a contested case, eligible for hearing, pursuant to the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.).]¹

¹[10. a. The division may form reciprocal agreements with, or accept certifications by, other public and private certifying entities, to facilitate LGBTQ+ business development and growth.

b. All reciprocal agreements shall provide that the quality of the program of the other certifying agency is the relative equal of the division's program.

c. Documentation from the reciprocal agency showing certification shall be provided.

d. In the event that the division forms reciprocal agreements with, or accepts certifications by, other public and or private certifying entities, it shall post information on its website, including the names of the entities, the effective date of accepting certifications by other entities, and links to such entities.]¹

¹[11. a. All information and documents submitted to the division as part of the certification application shall be deemed confidential, unless required by applicable federal and State law. Information required to be disclosed for purposes of inclusion in the SAVI database is not deemed confidential.

b. Information and documents provided to the division may be made available, subject to confidentiality limitations, pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), where required during a challenge or appeal proceeding pursuant to this act.]¹

¹[12. This act shall take effect on the 365th day next following the date of enactment.]¹

¹1. a. The Department of the Treasury shall establish, consistently with Executive Order No. 295 of 2022, a unified procedure for the certification of a business as an LGBTQ+ business. In establishing and administering the procedure required by this section, the department shall ensure that the application for certification process is clear, concise, and does not require duplication of effort on the part of the applicant.

b. The department shall:

(1) establish criteria to be used:

(a) to determine the status of a business as an LGBTQ+ business;

(b) to deny or revoke the certification of an LGBTQ+ business; and

(c) by a third-party challenging the qualifications of an applicant to be certified as an LGBTQ+ business;

(2) establish an appeal process for an LGBTQ+ business challenging the denial or revocation of the certification;

(3) provide a single form of application for certification, which form shall be written in plain language, and include instructions as to the certification procedure and any additional documents or information required to be supplied by the applicant;

(4) on no less than an annual basis, verify the status of each certified business to ensure continued compliance with the criteria for certification and control by the appropriate persons; and

(5) compile, maintain, and make available to the public, government agencies, and other organizations, lists of certified LGBTQ+ businesses.

c. A business may submit an application for certification as an LGBTQ+ business to the department at any time.

d. A business may submit to the department, in writing, a request to withdraw an application for certification as an LGBTQ+ business. A business may submit a request to withdraw an application one time within a 12-month period. A request to withdraw an application shall not be relevant to the department's consideration of a subsequent application submitted by that business. A business may submit a new application for certification following the passage of 90 calendar days after the date the business submitted a request to withdraw an application, but no more frequently than three times within a calendar year.

e. An applicant for certification pursuant to this section shall accurately and honestly supply all information required by the department. A certified LGBTQ+ business shall notify the department, as soon as possible, of changed circumstances that may impact the ownership composition of the business, control of the business, or otherwise affect the business's eligibility for certification pursuant to this section. The department shall revoke the certification of a business which fails to report a changed circumstance pursuant to this subsection.

f. The department may enter into a reciprocal agreement with, or accept the certification of, one or more public or private certifying entities in order to facilitate the development and growth of LGBTQ+ businesses, provided that the quality of the program established by each other certifying entity is substantially similar to the department's program of certifying LGBTQ+ businesses. The department shall document each reciprocal agreement it enters into, and each entity from which the department accepts certifications, by posting identifying information of the department's Internet website, which shall include: the name of each other certifying entity, the date the department starts accepting certifications from each other entity, and a link to each other certifying entity's Internet website.

g. Information and documents that a business submits to the department as part of the business's application for certification as an LGBTQ+ business shall be deemed confidential, unless otherwise required to be accessible pursuant to applicable federal or State law. Subject to confidentiality limitations pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), the department may make

available, during an appeal pursuant to this section, the information and documents a business has submitted to the department as part of the business's application for certification as an LGBTQ+ business. Information required to be disclosed for purposes of listing certified LGBTQ+ businesses pursuant to subsection b. of this section shall not be deemed confidential.

h. As used in this section:

"Appeal" means a filed written challenge to a denial or revocation of a certification as an LGBTQ+ business.

"Applicant" means a business that applies for certification as an LGBTQ+ business pursuant to this section.

"Business" means an entity organized for profit which includes, but is not limited to, a sole proprietorship, partnership, limited liability company, corporation, or joint venture.

"Certification" means a determination by the department that an applicant has met the standards for certification as an LGBTQ+ business, pursuant to this section.

"Department" means the Department of the Treasury.

"Executive Order No. 295" means Executive Order No. 295 (2022), issued by Governor Murphy on May 3, 2022.

"LGBTQ+" means lesbian, gay, bisexual, transgender, queer, questioning +, or other gender identities and sexual orientations that are non-cisgender and non-heterosexual.

"LGBTQ+ business" means a business, which is:

(1) a sole proprietorship owned and controlled by a person who identifies as LGBTQ+;

(2) a partnership or joint venture, in which at least 51 percent of the ownership interest is held by individuals who identify as LGBTQ+ and the management and daily business operations are controlled by one or more of the individuals who identify as LGBTQ+; or

(3) a corporation or other entity, the management and daily business operations of which are controlled by one or more individuals who identify as LGBTQ+ and of which at least 51 percent of the legal beneficial ownership is held by one or more individuals who identify as LGBTQ+.¹

¹2. The Department of the Treasury, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the provisions of this act.¹

¹3. This act shall take effect on the 180th day next following the date of enactment.¹

