Sponsored by:
Assemblywoman PAMELA R. LAMPITT
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District 3 (Cumberland, Gloucester and Salem)
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Co-Sponsored by:
Assemblywomen Mosquera, Watson Coleman, Assemblyman Fuentes,
Senators Sweeney, Weinberg, Buono, Codey, Gill, Madden and Turner

SYNOPSIS
Provides that unlawful employment practice occurs each time individual is
affected by decision or practice, including each time compensation is paid.

CURRENT VERSION OF TEXT
As amended on October 11, 2012 by the General Assembly pursuant to the
Governor's recommendations.

(Sponsorship Updated As Of: 6/22/2012)
AN ACT concerning discrimination in compensation or the terms, conditions, or privileges of employment and amending P.L.1945, c.169.

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

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

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

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

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

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
1Assembly ALA committee amendments adopted March 12, 2012.
2Assembly amendments adopted in accordance with Governor’s recommendations October 11, 2012.
shall not be an unlawful employment practice to require the
retirement of any employee who, for the two-year period
immediately before retirement, is employed in a bona fide executive
or a high policy-making position, if that employee is entitled to an
immediate non-forfeitable annual retirement benefit from a pension,
profit sharing, savings or deferred retirement plan, or any
combination of those plans, of the employer of that employee which
equals in the aggregate at least $27,000.00; and provided further
that an employer may restrict employment to citizens of the United
States where such restriction is required by federal law or is
otherwise necessary to protect the national interest.

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

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

For the purposes of this subsection, an unlawful employment
practice occurs, with respect to discrimination in compensation or
in the financial terms or financial conditions of employment, when
each occasion that an individual is affected by application of a discriminatory
compensation decision or other practice, including but not limited
to each time occasion that wages, benefits, or other compensation are paid, resulting in whole or in part from such a
decision or other practice. With respect to discrimination in
compensation or in the financial terms or financial conditions of
employment, in addition to any relief authorized by the laws of this
State, an aggrieved person may obtain recovery of back pay for up
to two years preceding the filing of the complaint.

Nothing in this subsection shall prohibit the court’s authority to
apply the doctrine of “continuing violation” to any appropriate
claim as that doctrine currently exists in New Jersey common law:
weaken, obstruct, or eliminate any potential equitable application of
the “discovery rule” as that doctrine is currently cognizable in New
Jersey common law; or affect any applicable statutes of limitation.

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

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

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

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

f. (1) For any owner, lessee, proprietor, manager,
superintendent, agent, or employee of any place of public
accommodation directly or indirectly to refuse, withhold from or
deny to any person any of the accommodations, advantages,
facilities or privileges thereof, or to discriminate against any person
in the furnishing thereof, or directly or indirectly to publish,
circulate, issue, display, post or mail any written or printed
communication, notice, or advertisement to the effect that any of
the accommodations, advantages, facilities, or privileges of any
such place will be refused, withheld from, or denied to any person
on account of the race, creed, color, national origin, ancestry,
marital status, civil union status, domestic partnership status, sex,
gender identity or expression, affectional or sexual orientation,
disability or nationality of such person, or that the patronage or
custom threatens of any person of any particular race, creed, color,
national origin, ancestry, marital status, civil union status, domestic
partnership status, sex, gender identity or expression, affectional or
sexual orientation, disability or nationality is unwelcome, objectionable or not acceptable, desired or solicited, and the production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained herein shall be construed to bar any place of public accommodation which is in its nature reasonably restricted exclusively to individuals of one sex, and which shall include but not be limited to any summer camp, day camp, or resort camp, bathhouse, dressing room, swimming pool, gymnasium, comfort station, dispensary, clinic or hospital, or school or educational institution which is restricted exclusively to individuals of one sex, provided individuals shall be admitted based on their gender identity or expression, from refusing, withholding from or denying to any individual of the opposite sex any of the accommodations, advantages, facilities or privileges thereof on the basis of sex; provided further, that the foregoing limitation shall not apply to any restaurant as defined in R.S.33:1-1 or place where alcoholic beverages are served.

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

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

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

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

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

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

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

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

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

(1) To refuse to sell, rent, assign, lease or sublease, or offer for
sale, rental, lease, assignment, or sublease any real property or part
or portion thereof to any person or group of persons or to refuse to
negotiate for the sale, rental, lease, assignment, or sublease of any
real property or part or portion thereof to any person or group of
persons because of race, creed, color, national origin, ancestry,
marital status, civil union status, domestic partnership status,
familial status, sex, gender identity or expression, affectional or
sexual orientation, disability, nationality, or source of lawful
income used for rental or mortgage payments, or to represent that
any real property or portion thereof is not available for inspection,
sale, rental, lease, assignment, or sublease when in fact it is so
available, or otherwise to deny or withhold any real property or any
part or portion of facilities thereof to or from any person or group of
persons because of race, creed, color, national origin, ancestry,
marital status, civil union status, domestic partnership status,
familial status, sex, gender identity or expression, affectional or
sexual orientation, disability or nationality;

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

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

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

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

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

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

(2) To use any form of application for such loan, extension of credit or financial assistance or to make record or inquiry in connection with applications for any such loan, extension of credit
or financial assistance which expresses, directly or indirectly, any
limitation, specification or discrimination as to race, creed, color,
national origin, ancestry, marital status, civil union status, domestic
partnership status, sex, gender identity or expression, affectional or
sexual orientation, disability, familial status or nationality or any
intent to make any such limitation, specification or discrimination;
unless otherwise required by law or regulation to retain or use such
information;
(3) (Deleted by amendment, P.L.2003, c.180).
(4) To discriminate against any person or group of persons
because of the source of any lawful income received by the person
or the source of any lawful rent payment to be paid for the real
property; or
(5) To discriminate against any person or group of persons
because that person's family includes children under 18 years of
age, or to make an agreement or mortgage which provides that the
agreement or mortgage shall be rendered null and void upon the
birth of a child. This paragraph shall not apply to housing for older
persons as defined in subsection mm. of section 5 of P.L.1945,
c.169 (C.10:5-5).
j. For any person whose activities are included within the
scope of this act to refuse to post or display such notices concerning
the rights or responsibilities of persons affected by this act as the
Attorney General may by regulation require.
k. For any real estate broker, real estate salesperson or
employee or agent thereof or any other individual, corporation,
partnership, or organization, for the purpose of inducing a
transaction for the sale or rental of real property from which
transaction such person or any of its members may benefit
financially, to represent that a change has occurred or will or may
occur in the composition with respect to race, creed, color, national
origin, ancestry, marital status, civil union status, domestic
partnership status, familial status, sex, gender identity or
expression, affectional or sexual orientation, disability, nationality,
or source of lawful income used for rental or mortgage payments of
the owners or occupants in the block, neighborhood or area in
which the real property is located, and to represent, directly or
indirectly, that this change will or may result in undesirable
consequences in the block, neighborhood or area in which the real
property is located, including, but not limited to the lowering of
property values, an increase in criminal or anti-social behavior, or a
decline in the quality of schools or other facilities.
l. For any person to refuse to buy from, sell to, lease from or
to, license, contract with, or trade with, provide goods, services or
information to, or otherwise do business with any other person on
the basis of the race, creed, color, national origin, ancestry, age,
sex, gender identity or expression, affectional or sexual orientation,
marital status, civil union status, domestic partnership status,
liability for service in the Armed Forces of the United States, disability, nationality, or source of lawful income used for rental or mortgage payments of such other person or of such other person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers. This subsection shall not prohibit refusals or other actions (1) pertaining to employee-employer collective bargaining, labor disputes, or unfair labor practices, or (2) made or taken in connection with a protest of unlawful discrimination or unlawful employment practices.

m. For any person to:
(1) Grant or accept any letter of credit or other document which evidences the transfer of funds or credit, or enter into any contract for the exchange of goods or services, where the letter of credit, contract, or other document contains any provisions requiring any person to discriminate against or to certify that he, she or it has not dealt with any other person on the basis of the race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, civil union status, domestic partnership status, disability, liability for service in the Armed Forces of the United States, or nationality of such other person or of such other person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.
(2) Refuse to grant or accept any letter of credit or other document which evidences the transfer of funds or credit, or refuse to enter into any contract for the exchange of goods or services, on the ground that it does not contain such a discriminatory provision or certification.

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

n. For any person to aid, abet, incite, compel, coerce, or induce the doing of any act forbidden by subsections l. and m. of section 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to do so. Such prohibited conduct shall include, but not be limited to:
(1) Buying from, selling to, leasing from or to, licensing, contracting with, trading with, providing goods, services, or information to, or otherwise doing business with any person because that person does, or agrees or attempts to do, any such act or any act prohibited by this subsection; or
(2) Boycotting, commercially blacklisting or refusing to buy from, sell to, lease from or to, license, contract with, provide goods,
services or information to, or otherwise do business with any person
because that person has not done or refuses to do any such act or
any act prohibited by this subsection; provided that this subsection
shall not prohibit refusals or other actions either pertaining to
employee-employer collective bargaining, labor disputes, or unfair
labor practices, or made or taken in connection with a protest of
unlawful discrimination or unlawful employment practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) This subsection shall not apply where the uniform application of terms and conditions of attendance to employees is essential to prevent undue hardship to the employer. The burden of
proof regarding the applicability of this subparagraph (d) shall be upon the employer.
(cf: P.L.2007, c.325, s.2)

2. This act shall take effect immediately.