

SENATE, No. 783

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Hunterdon and Mercer)

Assemblyman CARMELO G. GARCIA

District 33 (Hudson)

Co-Sponsored by:

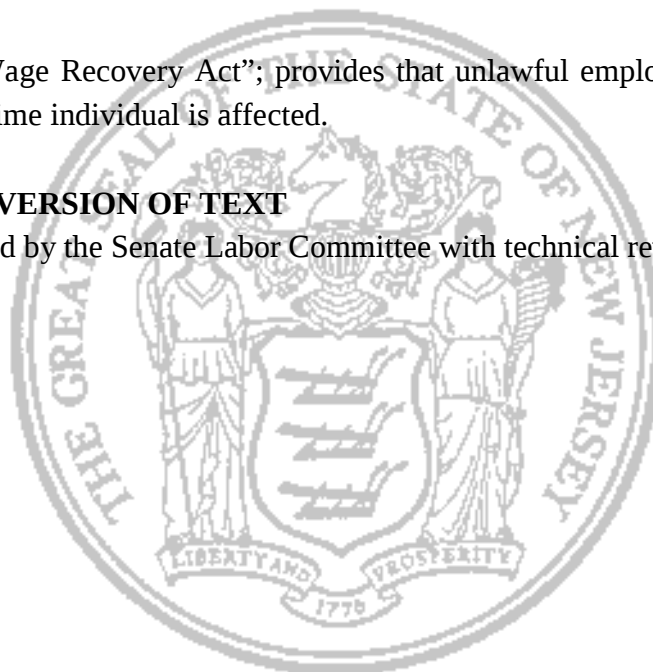
Senators Cunningham, Pou, Ruiz, Assemblywoman Tucker, Assemblyman Conaway and Assemblywoman Stender

SYNOPSIS

“Unfair Wage Recovery Act”; provides that unlawful employment practice occurs each time individual is affected.

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee with technical review.



(Sponsorship Updated As Of: 6/17/2014)

1 **AN ACT** concerning discrimination in compensation or the terms,
2 conditions, or privileges of employment and amending and
3 supplementing P.L.1945, c.169.

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

7
8 1. (New section) This act shall be known and may be cited as
9 the “Unfair Wage Recovery Act.”

10

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

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

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

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 religion in establishing and utilizing criteria for employment of an
2 employee; provided further, that it shall not be an unlawful
3 employment practice to require the retirement of any employee
4 who, for the two-year period immediately before retirement, is
5 employed in a bona fide executive or a high policy-making position,
6 if that employee is entitled to an immediate non-forfeitable annual
7 retirement benefit from a pension, profit sharing, savings or
8 deferred retirement plan, or any combination of those plans, of the
9 employer of that employee which equals in the aggregate at least
10 \$27,000.00; and provided further that an employer may restrict
11 employment to citizens of the United States where such restriction
12 is required by federal law or is otherwise necessary to protect the
13 national interest.

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

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

24 For the purposes of this subsection, an unlawful employment
25 practice occurs, with respect to discrimination in compensation or
26 in the financial terms or conditions of employment, each occasion
27 that an individual is affected by application of a discriminatory
28 compensation decision or other practice, including, but not limited
29 to, each occasion that wages, benefits, or other compensation are
30 paid, resulting in whole or in part from that decision or other
31 practice.

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

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

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

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

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

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

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

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

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

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

44 g. For any person, including but not limited to, any owner,
45 lessee, sublessee, assignee or managing agent of, or other person
46 having the right of ownership or possession of or the right to sell,

1 rent, lease, assign, or sublease any real property or part or portion
2 thereof, or any agent or employee of any of these:

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (1) 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,
42 sex, gender identity or expression, affectional or sexual orientation,
43 disability, familial status or nationality, in the granting,
44 withholding, extending, modifying, renewing, or purchasing, or in
45 the fixing of the rates, terms, conditions or provisions of any such
46 loan, extension of credit or financial assistance or purchase thereof
47 or in the extension of services in connection therewith;

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

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

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

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

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

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

46 l. For any person to refuse to buy from, sell to, lease from or
47 to, license, contract with, or trade with, provide goods, services or

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

15 m. For any person to:

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

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

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

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

- 1 (1) Buying from, selling to, leasing from or to, licensing,
2 contracting with, trading with, providing goods, services, or
3 information to, or otherwise doing business with any person
4 because that person does, or agrees or attempts to do, any such act
5 or any act prohibited by this subsection; or
- 6 (2) Boycotting, commercially blacklisting or refusing to buy
7 from, sell to, lease from or to, license, contract with, provide goods,
8 services or information to, or otherwise do business with any person
9 because that person has not done or refuses to do any such act or
10 any act prohibited by this subsection; provided that this subsection
11 shall not prohibit refusals or other actions either pertaining to
12 employee-employer collective bargaining, labor disputes, or unfair
13 labor practices, or made or taken in connection with a protest of
14 unlawful discrimination or unlawful employment practices.
- 15 o. For any multiple listing service, real estate brokers'
16 organization or other service, organization or facility related to the
17 business of selling or renting dwellings to deny any person access
18 to or membership or participation in such organization, or to
19 discriminate against such person in the terms or conditions of such
20 access, membership, or participation, on account of race, creed,
21 color, national origin, ancestry, age, marital status, civil union
22 status, domestic partnership status, familial status, pregnancy, sex,
23 gender identity or expression, affectional or sexual orientation,
24 disability or nationality.
- 25 p. Nothing in the provisions of this section shall affect the
26 ability of an employer to require employees to adhere to reasonable
27 workplace appearance, grooming and dress standards not precluded
28 by other provisions of State or federal law, except that an employer
29 shall allow an employee to appear, groom and dress consistent with
30 the employee's gender identity or expression.
- 31 q. (1) For any employer to impose upon a person as a condition
32 of obtaining or retaining employment, including opportunities for
33 promotion, advancement or transfers, any terms or conditions that
34 would require a person to violate or forego a sincerely held
35 religious practice or religious observance, including but not limited
36 to the observance of any particular day or days or any portion
37 thereof as a Sabbath or other holy day in accordance with the
38 requirements of the religion or religious belief, unless, after
39 engaging in a bona fide effort, the employer demonstrates that it is
40 unable to reasonably accommodate the employee's religious
41 observance or practice without undue hardship on the conduct of the
42 employer's business. Notwithstanding any other provision of law to
43 the contrary, an employee shall not be entitled to premium wages or
44 premium benefits for work performed during hours to which those
45 premium wages or premium benefits would ordinarily be
46 applicable, if the employee is working during those hours only as an

1 accommodation to his religious requirements. Nothing in this
2 subsection q. shall be construed as reducing:

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

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

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

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

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

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

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

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

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

- 1 (d) (i) The provisions of this subsection q. shall be applicable
2 only to reasonable accommodations of religious observances and
3 shall not supersede any definition of undue hardship or standards
4 for reasonable accommodation of the disabilities of employees.
- 5 (ii) This subsection q. shall not apply where the uniform
6 application of terms and conditions of attendance to employees is
7 essential to prevent undue hardship to the employer. The burden of
8 proof regarding the applicability of this subparagraph (d) shall be
9 upon the employer.
- 10 r. For any employer to take reprisals against any employee for
11 requesting from any other employee or former employee of the
12 employer information regarding the job title, occupational category,
13 and rate of compensation, including benefits, of any employee or
14 former employee of the employer, or the gender, race, ethnicity,
15 military status, or national origin of any employee or former
16 employee of the employer, regardless of whether the request was
17 responded to, if the purpose of the request for the information was
18 to assist in investigating the possibility of the occurrence of, or in
19 taking of legal action regarding, potential discriminatory treatment
20 concerning pay, compensation, bonuses, other compensation, or
21 benefits. Nothing in this subsection shall be construed to require an
22 employee to disclose such information about the employee herself
23 to any other employee or former employee of the employer or to
24 any authorized representative of the other employee or former
25 employee.
- 26 s. For an employer to treat, for employment-related purposes, a
27 woman employee that the employer knows, or should know, is
28 affected by pregnancy in a manner less favorable than the treatment
29 of other persons not affected by pregnancy but similar in their
30 ability or inability to work. In addition, an employer of an
31 employee who is a woman affected by pregnancy shall make
32 available to the employee reasonable accommodation in the
33 workplace, such as bathroom breaks, breaks for increased water
34 intake, periodic rest, assistance with manual labor, job restructuring
35 or modified work schedules, and temporary transfers to less
36 strenuous or hazardous work, for needs related to the pregnancy
37 when the employee, based on the advice of her physician, requests
38 the accommodation, unless the employer can demonstrate that
39 providing the accommodation would be an undue hardship on the
40 business operations of the employer. The employer shall not in any
41 way penalize the employee in terms, conditions or privileges of
42 employment for requesting or using the accommodation. Workplace
43 accommodation provided pursuant to this subsection and paid or
44 unpaid leave provided to an employee affected by pregnancy shall
45 not be provided in a manner less favorable than accommodations or
46 leave provided to other employees not affected by pregnancy but
47 similar in their ability or inability to work. This subsection shall

1 not be construed as otherwise increasing or decreasing any
2 employee's rights under law to paid or unpaid leave in connection
3 with pregnancy.

4 For the purposes of this section "pregnancy" means pregnancy,
5 childbirth, or medical conditions related to pregnancy or childbirth,
6 including recovery from childbirth.

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

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

20

21 3. This act shall take effect immediately.