

ASSEMBLY, No. 1836

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Requires employer to provide certain accommodations to employee who is breast feeding.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



A1836 TIMBERLAKE, JASEY

2

1 AN ACT concerning protections provided to employees who are
2 breast feeding children and amending P.L.1945, c.169.

3

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

6

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

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

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

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

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

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

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

28 In addition to any other relief authorized by the "Law Against
29 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for
30 discrimination in compensation or in the financial terms or
31 conditions of employment, liability shall accrue and an aggrieved
32 person may obtain relief for back pay for the entire period of time,
33 except not more than six years, in which the violation with regard to
34 discrimination in compensation or in the financial terms or
35 conditions of employment has been continuous, if the violation
36 continues to occur within the statute of limitations.

37 Nothing in this subsection shall prohibit the application of the
38 doctrine of "continuing violation" or the "discovery rule" to any
39 appropriate claim as those doctrines currently exist in New Jersey
40 common law. It shall be an unlawful employment practice to
41 require employees or prospective employees to consent to a
42 shortened statute of limitations or to waive any of the protections
43 provided by the "Law Against Discrimination," P.L.1945, c.169
44 (C.10:5-1 et seq.).

45 b. For a labor organization, because of the race, creed, color,
46 national origin, ancestry, age, marital status, civil union status,
47 domestic partnership status, affectional or sexual orientation,
48 gender identity or expression, disability, pregnancy or

1 breastfeeding, or sex of any individual, or because of the liability
2 for service in the Armed Forces of the United States or nationality
3 of any individual, to exclude or to expel from its membership such
4 individual or to discriminate in any way against any of its members,
5 against any applicant for, or individual included in, any apprentice
6 or other training program or against any employer or any individual
7 employed by an employer; provided, however, that nothing herein
8 contained shall be construed to bar a labor organization from
9 excluding from its apprentice or other training programs any person
10 on the basis of sex in those certain circumstances where sex is a
11 bona fide occupational qualification reasonably necessary to the
12 normal operation of the particular apprentice or other training
13 program.

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

27 d. For any person to take reprisals against any person because
28 that person has opposed any practices or acts forbidden under this
29 act or because that person has sought legal advice regarding rights
30 under this act, shared relevant information with legal counsel,
31 shared information with a governmental entity, or filed a complaint,
32 testified or assisted in any proceeding under this act or to coerce,
33 intimidate, threaten or interfere with any person in the exercise or
34 enjoyment of, or on account of that person having aided or
35 encouraged any other person in the exercise or enjoyment of, any
36 right granted or protected by this act.

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

40 f. (1) For any owner, lessee, proprietor, manager,
41 superintendent, agent, or employee of any place of public
42 accommodation directly or indirectly to refuse, withhold from or
43 deny to any person any of the accommodations, advantages,
44 facilities or privileges thereof, or to discriminate against any person
45 in the furnishing thereof, or directly or indirectly to publish,
46 circulate, issue, display, post or mail any written or printed
47 communication, notice, or advertisement to the effect that any of
48 the accommodations, advantages, facilities, or privileges of any

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

33 (2) Notwithstanding the definition of "a place of public
34 accommodation" as set forth in subsection 1. of section 5 of
35 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
36 manager, superintendent, agent, or employee of any private club or
37 association to directly or indirectly refuse, withhold from or deny to
38 any individual who has been accepted as a club member and has
39 contracted for or is otherwise entitled to full club membership any
40 of the accommodations, advantages, facilities or privileges thereof,
41 or to discriminate against any member in the furnishing thereof on
42 account of the race, creed, color, national origin, ancestry, marital
43 status, civil union status, domestic partnership status, pregnancy or
44 breastfeeding, sex, gender identity, or expression, affectional or
45 sexual orientation, disability, liability for service in the Armed
46 Forces of the United States or nationality of such person.

47 In addition to the penalties otherwise provided for a violation of
48 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)

1 of subsection f. of this section is the holder of an alcoholic beverage
2 license issued under the provisions of R.S.33:1-12 for that private
3 club or association, the matter shall be referred to the Director of
4 the Division of Alcoholic Beverage Control who shall impose an
5 appropriate penalty in accordance with the procedures set forth in
6 R.S.33:1-31.

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

12 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
13 to deny to or withhold from any person or group of persons any real
14 property or part or portion thereof because of race, creed, color,
15 national origin, ancestry, marital status, civil union status, domestic
16 partnership status, pregnancy or breastfeeding, sex, gender identity
17 or expression, affectional or sexual orientation, familial status,
18 disability, liability for service in the Armed Forces of the United
19 States, nationality, or source of lawful income used for rental or
20 mortgage payments;

21 (2) To discriminate against any person or group of persons
22 because of race, creed, color, national origin, ancestry, marital
23 status, civil union status, domestic partnership status, pregnancy or
24 breastfeeding, sex, gender identity or expression, affectional or
25 sexual orientation, familial status, disability, liability for service in
26 the Armed Forces of the United States, nationality or source of
27 lawful income used for rental or mortgage payments in the terms,
28 conditions or privileges of the sale, rental or lease of any real
29 property or part or portion thereof or in the furnishing of facilities
30 or services in connection therewith;

31 (3) To print, publish, circulate, issue, display, post or mail, or
32 cause to be printed, published, circulated, issued, displayed, posted
33 or mailed any statement, advertisement, publication or sign, or to
34 use any form of application for the purchase, rental, lease,
35 assignment or sublease of any real property or part or portion
36 thereof, or to make any record or inquiry in connection with the
37 prospective purchase, rental, lease, assignment, or sublease of any
38 real property, or part or portion thereof which expresses, directly or
39 indirectly, any limitation, specification or discrimination as to race,
40 creed, color, national origin, ancestry, marital status, civil union
41 status, domestic partnership status, pregnancy or breastfeeding, sex,
42 gender identity, or expression, affectional or sexual orientation,
43 familial status, disability, liability for service in the Armed Forces
44 of the United States, nationality, or source of lawful income used
45 for rental or mortgage payments, or any intent to make any such
46 limitation, specification or discrimination, and the production of
47 any such statement, advertisement, publicity, sign, form of
48 application, record, or inquiry purporting to be made by any such

1 person shall be presumptive evidence in any action that the same
2 was authorized by such person; provided, however, that nothing
3 contained in this subsection shall be construed to bar any person
4 from refusing to sell, rent, lease, assign or sublease or from
5 advertising or recording a qualification as to sex for any room,
6 apartment, flat in a dwelling or residential facility which is planned
7 exclusively for and occupied by individuals of one sex to any
8 individual of the exclusively opposite sex on the basis of sex
9 provided individuals shall be qualified based on their gender
10 identity or expression;

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

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

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

25 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
26 sale, rental, lease, assignment, or sublease any real property or part
27 or portion thereof to any person or group of persons or to refuse to
28 negotiate for the sale, rental, lease, assignment, or sublease of any
29 real property or part or portion thereof to any person or group of
30 persons because of race, creed, color, national origin, ancestry,
31 marital status, civil union status, domestic partnership status,
32 familial status, pregnancy or breastfeeding, sex, gender identity or
33 expression, affectional or sexual orientation, liability for service in
34 the Armed Forces of the United States, disability, nationality, or
35 source of lawful income used for rental or mortgage payments, or to
36 represent that any real property or portion thereof is not available
37 for inspection, sale, rental, lease, assignment, or sublease when in
38 fact it is so available, or otherwise to deny or withhold any real
39 property or any part or portion of facilities thereof to or from any
40 person or group of persons because of race, creed, color, national
41 origin, ancestry, marital status, civil union status, domestic
42 partnership status, familial status, pregnancy or breastfeeding, sex,
43 gender identity or expression, affectional or sexual orientation,
44 disability, liability for service in the Armed Forces of the United
45 States, or nationality;

46 (2) To discriminate against any person because of race, creed,
47 color, national origin, ancestry, marital status, civil union status,
48 domestic partnership status, familial status, pregnancy or

1 breastfeeding, sex, gender identity or expression, affectional or
2 sexual orientation, disability, liability for service in the Armed
3 Forces of the United States, nationality, or source of lawful income
4 used for rental or mortgage payments in the terms, conditions or
5 privileges of the sale, rental, lease, assignment or sublease of any
6 real property or part or portion thereof or in the furnishing of
7 facilities or services in connection therewith;

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

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

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

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

9 (1) To discriminate against any person or group of persons
10 because of race, creed, color, national origin, ancestry, marital
11 status, civil union status, domestic partnership status, pregnancy or
12 breastfeeding, sex, gender identity or expression, affectional or
13 sexual orientation, disability, liability for service in the Armed
14 Forces of the United States, familial status or nationality, in the
15 granting, withholding, extending, modifying, renewing, or
16 purchasing, or in the fixing of the rates, terms, conditions or
17 provisions of any such loan, extension of credit or financial
18 assistance or purchase thereof or in the extension of services in
19 connection therewith;

20 (2) To use any form of application for such loan, extension of
21 credit or financial assistance or to make record or inquiry in
22 connection with applications for any such loan, extension of credit
23 or financial assistance which expresses, directly or indirectly, any
24 limitation, specification or discrimination as to race, creed, color,
25 national origin, ancestry, marital status, civil union status, domestic
26 partnership status, pregnancy or breastfeeding, sex, gender identity
27 or expression, affectional or sexual orientation, disability, liability
28 for service in the Armed Forces of the United States, familial status
29 or nationality or any intent to make any such limitation,
30 specification or discrimination; unless otherwise required by law or
31 regulation to retain or use such information;

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

33 (4) To discriminate against any person or group of persons
34 because of the source of any lawful income received by the person
35 or the source of any lawful rent payment to be paid for the real
36 property; or

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

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

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

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

37 m. For any person to:

38 (1) Grant or accept any letter of credit or other document which
39 evidences the transfer of funds or credit, or enter into any contract
40 for the exchange of goods or services, where the letter of credit,
41 contract, or other document contains any provisions requiring any
42 person to discriminate against or to certify that he, she or it has not
43 dealt with any other person on the basis of the race, creed, color,
44 national origin, ancestry, age, pregnancy or breastfeeding, sex,
45 gender identity or expression, affectional or sexual orientation,
46 marital status, civil union status, domestic partnership status,
47 disability, liability for service in the Armed Forces of the United
48 States, or nationality of such other person or of such other person's

1 spouse, partners, members, stockholders, directors, officers,
2 managers, superintendents, agents, employees, business associates,
3 suppliers, or customers.

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

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

17 n. For any person to aid, abet, incite, compel, coerce, or induce
18 the doing of any act forbidden by subsections l. and m. of section
19 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
20 do so. Such prohibited conduct shall include, but not be limited to:

21 (1) Buying from, selling to, leasing from or to, licensing,
22 contracting with, trading with, providing goods, services, or
23 information to, or otherwise doing business with any person
24 because that person does, or agrees or attempts to do, any such act
25 or any act prohibited by this subsection; or

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

35 o. For any multiple listing service, real estate brokers'
36 organization or other service, organization or facility related to the
37 business of selling or renting dwellings to deny any person access
38 to or membership or participation in such organization, or to
39 discriminate against such person in the terms or conditions of such
40 access, membership, or participation, on account of race, creed,
41 color, national origin, ancestry, age, marital status, civil union
42 status, domestic partnership status, familial status, pregnancy or
43 breastfeeding, sex, gender identity or expression, affectional or
44 sexual orientation, disability, liability for service in the Armed
45 Forces of the United States or nationality.

46 p. Nothing in the provisions of this section shall affect the
47 ability of an employer to require employees to adhere to reasonable
48 workplace appearance, grooming and dress standards not precluded

1 by other provisions of State or federal law, except that an employer
2 shall allow an employee to appear, groom and dress consistent with
3 the employee's gender identity or expression.

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

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

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

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

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

- 1 (b) In determining whether the accommodation constitutes an
2 undue hardship, the factors considered shall include:
- 3 (i) The identifiable cost of the accommodation, including the
4 costs of loss of productivity and of retaining or hiring employees or
5 transferring employees from one facility to another, in relation to
6 the size and operating cost of the employer.
- 7 (ii) The number of individuals who will need the particular
8 accommodation for a sincerely held religious observance or
9 practice.
- 10 (iii) For an employer with multiple facilities, the degree to
11 which the geographic separateness or administrative or fiscal
12 relationship of the facilities will make the accommodation more
13 difficult or expensive.
- 14 (c) An accommodation shall be considered to constitute an
15 undue hardship if it will result in the inability of an employee to
16 perform the essential functions of the position in which he or she is
17 employed.
- 18 (d) (i) The provisions of this subsection q. shall be applicable
19 only to reasonable accommodations of religious observances and
20 shall not supersede any definition of undue hardship or standards
21 for reasonable accommodation of the disabilities of employees.
- 22 (ii) This subsection q. shall not apply where the uniform
23 application of terms and conditions of attendance to employees is
24 essential to prevent undue hardship to the employer. The burden of
25 proof regarding the applicability of this subparagraph (d) shall be
26 upon the employer.
- 27 r. For any employer to take reprisals against any employee for
28 requesting from, discussing with, or disclosing to, any other
29 employee or former employee of the employer, a lawyer from
30 whom the employee seeks legal advice, or any government agency
31 information regarding the job title, occupational category, and rate
32 of compensation, including benefits, of the employee or any other
33 employee or former employee of the employer, or the gender, race,
34 ethnicity, military status, or national origin of the employee or any
35 other employee or former employee of the employer, regardless of
36 whether the request was responded to, or to require, as a condition
37 of employment, any employee or prospective employee to sign a
38 waiver, or to otherwise require an employee or prospective
39 employee to agree, not to make those requests or disclosures.
40 Nothing in this subsection shall be construed to require an
41 employee to disclose such information about the employee herself
42 to any other employee or former employee of the employer or to
43 any authorized representative of the other employee or former
44 employee.
- 45 s. For an employer to treat, for employment-related purposes, a
46 woman employee that the employer knows, or should know, is
47 affected by pregnancy or breastfeeding in a manner less favorable
48 than the treatment of other persons not affected by pregnancy or

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

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

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

45 t. For an employer to pay any of its employees who is a
46 member of a protected class at a rate of compensation, including
47 benefits, which is less than the rate paid by the employer to
48 employees who are not members of the protected class for

1 substantially similar work, when viewed as a composite of skill,
2 effort and responsibility. An employer who is paying a rate of
3 compensation in violation of this subsection shall not reduce the
4 rate of compensation of any employee in order to comply with this
5 subsection. An employer may pay a different rate of compensation
6 only if the employer demonstrates that the differential is made
7 pursuant to a seniority system, a merit system, or the employer
8 demonstrates:

9 (1) That the differential is based on one or more legitimate, bona
10 fide factors other than the characteristics of members of the
11 protected class, such as training, education or experience, or the
12 quantity or quality of production;

13 (2) That the factor or factors are not based on, and do not
14 perpetuate, a differential in compensation based on sex or any other
15 characteristic of members of a protected class;

16 (3) That each of the factors is applied reasonably;

17 (4) That one or more of the factors account for the entire wage
18 differential; and

19 (5) That the factors are job-related with respect to the position
20 in question and based on a legitimate business necessity. A factor
21 based on business necessity shall not apply if it is demonstrated that
22 there are alternative business practices that would serve the same
23 business purpose without producing the wage differential.

24 Comparisons of wage rates shall be based on wage rates in all of
25 an employer's operations or facilities. For the purposes of this
26 subsection, "member of a protected class" means an employee who
27 has one or more characteristics, including race, creed, color,
28 national origin, nationality, ancestry, age, marital status, civil union
29 status, domestic partnership status, affectional or sexual orientation,
30 genetic information, pregnancy, sex, gender identity or expression,
31 disability or atypical hereditary cellular or blood trait of any
32 individual, or liability for service in the armed forces, for which
33 subsection a. of this section prohibits an employer from refusing to
34 hire or employ or barring or discharging or requiring to retire from
35 employment or discriminating against the individual in
36 compensation or in terms, conditions or privileges of employment.
37 (cf: P.L.2018, c.9, s.2)

38
39 2. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 This bill would clarify protections provided in the "Law Against
45 Discrimination" to working mothers who are breast feeding.
46 Specifically, the bill provides that an employer is required to
47 accommodate a breast feeding employee for as long as the
48 employee desires. Additionally, the bill clarifies that breast feeding

A1836 TIMBERLAKE, JASEY

16

1 employees are entitled to reasonable break time and a modified
2 work schedule for the purpose of milk expression.

3 Further, the bill requires an employer to provide a suitable room
4 or other location with privacy, other than a restroom, for the
5 purpose of milk expression.