ASSEMBLY, No. 2220



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED FEBRUARY 7, 2022

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

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District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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District 37 (Bergen)

SYNOPSIS

The “New Jersey Intern Protection Act”; provides legal protections and remedies for persons engaged in internships with employers.

CURRENT VERSION OF TEXT

As introduced.



An Act providing protections and remedies for persons engaged in internships with employers, designated the “New Jersey Intern Protection Act,” and amending the titles and bodies of various parts of the statutory law.

**Be It Enacted** *by the Senate and General Assembly of the State of New Jersey:*

1. The title of P.L.2001, c.385 is amended to read as follows:

An Act imposing liability on employers who discharge or discriminate against employees or interns for displaying the American flag, and supplementing P.L.1945, c.169 (C.10:5-1 et seq.).

(cf: P.L.2001, c.385, title)

2. The title of P.L.1986, c.105 is amended to read as follows:

An Act **[**to protect employees from**]** concerning retaliatory **[**action**]** actions by employers and supplementing Title 34 of the Revised Statutes.

(cf: P.L.1986, c.105, title)

3. The title of P.L.2006, c.53 is amended to read as follows:

An Act concerning employer communications **[**to employees**]** about religious and political matters, and supplementing Title 34 of the Revised Statutes.

(cf: P.L.2006, c.53, title)

4. Section 3 of P.L.1945, c.169 (C.10:5-3) is amended to read as follows:

3. The Legislature finds and declares that practices of discrimination against any of its inhabitants, because of race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, disability or nationality, are matters of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State; provided, however, that nothing in this expression of policy prevents the making of legitimate distinctions between citizens and aliens when required by federal law or otherwise necessary to promote the national interest.

The Legislature further declares its opposition to such practices of discrimination when directed against any person by reason of the

race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, liability for service in the Armed Forces of the United States, disability or nationality of that person or that person's family members, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, interns, business associates, suppliers, or customers, in order that the economic prosperity and general welfare of the inhabitants of the State may be protected and ensured.

The Legislature further finds that because of discrimination, people suffer personal hardships, and the State suffers a grievous harm. The personal hardships include: economic loss; time loss; physical and emotional stress; and in some cases severe emotional trauma, illness, homelessness or other irreparable harm resulting from the strain of employment or employer internship controversies; relocation, search and moving difficulties; anxiety caused by lack of information, uncertainty, and resultant planning difficulty; career, education, family and social disruption; and adjustment problems, which particularly impact on those protected by this act. Such harms have, under the common law, given rise to legal remedies, including compensatory and punitive damages. The Legislature intends that such damages be available to all persons protected by this act and that this act shall be liberally construed in combination with other protections available under the laws of this State.

(cf: P.L.2019, c.436, s.1)

5. Section 4 of P.L.1945, c.169 (C.10:5-4) is amended to read as follows:

4. All persons shall have the opportunity to obtain employment or internships with an employer, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.

(cf: P.L.2017, c.184, s.1)

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

5. As used in P.L.1945, c.169 (C.10:5-1 et seq.), unless a different meaning clearly appears from the context:

a. "Person" includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.

b. "Employment agency" includes any person undertaking to procure employees or opportunities for others to work.

c. "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

d. "Unlawful employment practice" and "unlawful discrimination" include only those unlawful practices and acts specified in section 11 of P.L.1945, c.169 (C.10:5-12).

e. "Employer" includes all persons as defined in subsection a. of this section unless otherwise specifically exempt under another section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards, or bodies.

f. (1) "Employee" does not include any individual employed in the domestic service of any person.

(2) “Intern” means an individual who performs services for an employer on a temporary basis whose work: (a) provides training or supplements training given in an educational environment such that the employability of the individual performing the work may be enhanced; (b) provides experience for the benefit of the individual performing the work; and (c) is performed under the supervision of existing staff. The term “intern” shall include individuals without regard to whether the employer pays them a salary or wage.

g. "Liability for service in the Armed Forces of the United States" means subject to being ordered as an individual or member of an organized unit into active service in the Armed Forces of the United States by reason of membership in the National Guard, naval militia or a reserve component of the Armed Forces of the United States, or subject to being inducted into such armed forces through a system of national selective service.

h. "Division" means the "Division on Civil Rights" created by P.L.1945, c.169 (C.10:5-1 et seq.).

i. "Attorney General" means the Attorney General of the State of New Jersey or the Attorney General's representative or designee.

j. "Commission" means the Commission on Civil Rights created by P.L.1945, c.169 (C.10:5-1 et seq.).

k. "Director" means the Director of the Division on Civil Rights.

l. "A place of public accommodation" shall include, but not be limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation, or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage, any public conveyance operated on land or water or in the air or any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station; any dispensary, clinic, or hospital; any public library; and any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education or the Commissioner of Education of the State of New Jersey. Nothing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or post-secondary school from using in good faith criteria other than race, creed, color, national origin, ancestry, gender identity, or expression or affectional or sexual orientation in the admission of students.

m. "A publicly assisted housing accommodation" shall include all housing built with public funds or public assistance pursuant to P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303, P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184, and all housing financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof.

n. The term "real property" includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, and leaseholds, provided, however, that, except as to publicly assisted housing accommodations, the provisions of this act shall not apply to the rental: (1) of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence; or (2) of a room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence at the time of such rental. Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, in the sale, lease, or rental of real property, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. Nor does any provision under **[**this act**]** P.L.1945, c.169 (C.10:5-1 et seq.) regarding discrimination on the basis of familial status apply with respect to housing for older persons.

o. "Real estate broker" includes a person, firm, or corporation who, for a fee, commission, or other valuable consideration, or by reason of promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting, or auctioning of any real estate, or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others; or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association, or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

p. "Real estate salesperson" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale, or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

q. "Disability" means physical or sensory disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impairment, or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological, or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological, or neurological conditions which prevents the typical exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

r. "Blind person" or "person who is blind" means any individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lens or whose visual acuity is better than 20/200 if accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

s. "Guide dog" means a dog used to assist persons who are deaf, or which is fitted with a special harness so as to be suitable as an aid to the mobility of a person who is blind, and is used by a person who is blind and has satisfactorily completed a specific course of training in the use of such a dog, and has been trained by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities, including, but not limited to, those persons who are blind or deaf, as reputable and competent to provide dogs with training of this type.

t. "Guide or service dog trainer" means any person who is employed by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities, including, but not limited to, those persons who are blind, have visual impairments, or are deaf or have hearing impairments, as reputable and competent to provide dogs with training, as defined in this section, and who is actually involved in the training process.

u. "Housing accommodation" means any publicly assisted housing accommodation or any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

v. "Public facility" means any place of public accommodation and any street, highway, sidewalk, walkway, public building, and any other place or structure to which the general public is regularly, normally, or customarily permitted or invited.

w. "Deaf person" or "person who is deaf" means any person whose hearing is so severely impaired that the person is unable to hear and understand conversational speech through the unaided ear alone, and who must depend primarily on an assistive listening device or visual communication such as writing, lip reading, sign language, and gestures.

x. "Atypical hereditary cellular or blood trait" means sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic fibrosis trait.

y. "Sickle cell trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests.

z. "Hemoglobin C trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in normal proportions by standard chemical and physical analytic tests.

aa. "Thalassemia trait" means the presence of the thalassemia gene which in combination with another similar gene results in the chronic hereditary disease Cooley's anemia.

bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene which in combination with another similar gene results in the chronic hereditary disease Tay-Sachs.

cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis gene which in combination with another similar gene results in the chronic hereditary disease cystic fibrosis.

dd. "Service dog" means any dog individually trained to the requirements of a person with a disability including, but not limited to minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items. This term shall include a "seizure dog" trained to alert or otherwise assist persons with epilepsy or other seizure disorders.

ee. "Qualified Medicaid applicant" means an individual who is a qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

ff. "AIDS" means acquired **[**immune deficiency**]** immunodeficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

gg. "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

hh. "Affectional or sexual orientation" means male or female heterosexuality, homosexuality, or bisexuality by inclination, practice, identity, or expression, having a history thereof or being perceived, presumed, or identified by others as having such an orientation.

ii. "Heterosexuality" means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the other gender.

jj. "Homosexuality" means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the same gender.

kk. "Bisexuality" means affectional, emotional, or physical attraction or behavior which is directed towards persons of either gender.

ll. "Familial status" means being the natural parent of a child, the adoptive parent of a child, the resource family parent of a child, having a "parent and child relationship" with a child as defined by State law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child, or any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

mm. "Housing for older persons" means housing:

(1) provided under any State program that the Attorney General determines is specifically designed and operated to assist persons who are elderly (as defined in the State program); or provided under any federal program that the United States Department of Housing and Urban Development determines is specifically designed and operated to assist persons who are elderly (as defined in the federal program); or

(2) intended for, and solely occupied by, persons 62 years of age or older; or

(3) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this paragraph, the Attorney General shall adopt regulations which require at least the following factors:

(a) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(b) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(c) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Housing shall not fail to meet the requirements for housing for older persons by reason of: persons residing in such housing as of September 13, 1988 not meeting the age requirements of this subsection, provided that new occupants of such housing meet the age requirements of this subsection; or unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of this subsection.

nn. "Genetic characteristic" means any inherited gene or chromosome, or alteration thereof, that is scientifically or medically believed to predispose an individual to a disease, disorder, or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder, or syndrome.

oo. "Genetic information" means the information about genes, gene products, or inherited characteristics that may derive from an individual or family member.

pp. "Genetic test" means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to identify a predisposing genetic characteristic.

qq. "Domestic partnership" means a domestic partnership established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

rr. "Gender identity or expression" means having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth.

ss. "Civil **[**Union**]** union" means a legally recognized union of two eligible individuals established pursuant to R.S.37:1-1 et seq. and P.L.2006, c.103 (C.37:1-28 et al.).

tt. "Premium wages" means additional remuneration for night, weekend, or holiday work, or for standby or irregular duty.

uu. "Premium benefit" means an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due the employee for an equivalent period of work performed during the regular work schedule of the employee.

vv. "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture, hair types, and protective hairstyles.

ww. "Protective hairstyles" includes, but is not limited to, such hairstyles as braids, locks, and twists.

xx. "Family member" means a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, partner in a civil union couple, domestic partner, or any other individual related by blood to the person, and any other individual that the person shows to have a close association with the person which is the equivalent of a family relationship.

(cf: P.L.2019, c.436, s.2)

7. 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, pregnancy or breastfeeding, 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 engage as an intern, or to bar or to discharge or require to retire, unless justified by lawful considerations other than age, from employment or internship such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment or internship; provided, however, it shall not be an unlawful employment practice to refuse to accept for employment or internship 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 or internship 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 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 internship, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment or internship of clergy, religious teachers or other **[**employees**]** individuals 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 or for the internship of an intern; provided further, that it 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 or internship 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 conditions of employment, each occasion that an individual is affected by application of a discriminatory compensation decision or other practice, including, but not limited to, each occasion that wages, benefits, or other compensation are paid, resulting in whole or in part from the decision or other practice.

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

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

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, pregnancy or breastfeeding, 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 or engaged in an internship with 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 internship, or to make an inquiry in connection with prospective employment or internship, 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, pregnancy or breastfeeding, 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**]** P.L.1945, c.169 (C.10:5-1 et seq.) or because that person has sought legal advice regarding rights under this act, shared relevant information with legal counsel, shared information with a governmental entity, or filed a complaint, testified or assisted in any proceeding under **[**this act**]** P.L.1945, c.169 (C.10:5-1 et seq.) 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**]** P.L.1945, c.169 (C.10:5-1 et seq.).

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**]** P.L.1945, c.169 (C.10:5-1 et seq.), 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality of such person, or that the patronage or custom thereat of any person of any particular race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding status, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States 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, pregnancy or breastfeeding, sex, gender identity, or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, 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, pregnancy or breastfeeding, sex, gender identity, or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, liability for service in the Armed Forces of the United States, 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, 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**]** P.L.1945, c.169 (C.10:5-1 et seq.) to refuse to post or display such notices concerning the rights or responsibilities of persons affected by **[**this act**]** P.L.1945, c.169 (C.10:5-1 et seq.) 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, 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, pregnancy or breastfeeding, 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 family members, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, interns, 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, pregnancy or breastfeeding, 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 family members, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, interns, 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, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality.

p. Nothing in the provisions of this section shall affect the ability of an employer to require employees or interns 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 or intern to appear, groom and dress consistent with the employee's or intern’s gender identity or expression.

q. (1) For any employer to impose upon a person as a condition of obtaining or retaining employment or internship, 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 or intern’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 or intern to utilize leave, as provided for in this subsection q., which is solely used to accommodate the employee's or intern’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 or internship 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 or internship 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, if applicable, 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 q., "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 or intern to perform the essential functions of the position in which he or she is employed or engaged as an intern.

(d) (i) The provisions of this subsection q. 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 or interns.

(ii) This subsection q. shall not apply where the uniform application of terms and conditions of attendance to employees or interns 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.

r. For any employer to take reprisals against any employee or intern for requesting from, discussing with, or disclosing to, any other employee or former employee, or any other intern or former intern of the employer, a lawyer from whom the employee seeks legal advice, or any government agency information regarding the job title, occupational category, and rate of compensation, including benefits, of the employee or any other employee or former employee, or any intern or former intern, of the employer, or the gender, race, ethnicity, military status, or national origin of the employee or any other employee or former employee of the employer, regardless of whether the request was responded to, or to require, as a condition of employment, any employee or prospective employee to sign a waiver, or to otherwise require an employee or prospective employee to agree, not to make those requests or disclosures. Nothing in this subsection shall be construed to require an employee or intern to disclose such information about the employee or intern herself to any other employee or former employee, or intern or former intern, of the employer or to any authorized representative **[**of the other employee or former employee**]** thereof.

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

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

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

t. For an employer to pay any of its employees who is a member of a protected class at a rate of compensation, including benefits, which is less than the rate paid by the employer to employees who are not members of the protected class for substantially similar work, when viewed as a composite of skill, effort and responsibility. An employer who is paying a rate of compensation in violation of this subsection shall not reduce the rate of compensation of any employee in order to comply with this subsection. An employer may pay a different rate of compensation only if the employer demonstrates that the differential is made pursuant to a seniority system, a merit system, or the employer demonstrates:

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

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

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

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

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

Comparisons of wage rates shall be based on wage rates in all of an employer's operations or facilities. For the purposes of this subsection, "member of a protected class" means an employee who has one or more characteristics, including race, creed, color, national origin, nationality, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or liability for service in the armed forces, for which subsection a. of this section prohibits an employer from refusing to hire or employ or barring or discharging or requiring to retire from employment or discriminating against the individual in compensation or in terms, conditions or privileges of employment.

(cf: P.L.2021, c.248, s.2)

8. Section 1 of P.L.2001, c.385 (C.10:5-12.6) is amended to read as follows:

1. No employer, public or private, shall discharge or discriminate against an employee or intern in compensation or in terms, conditions or privileges of employment or internship for displaying the American flag on the employee's or intern’s person or work station, provided the display does not substantially and materially interfere with the employee's or intern’s job duties. An employer who discharges or discriminates against an employee or intern as described in this section shall be liable to the employee or intern for damages caused by the discharge or discrimination, including punitive damages, and for reasonable attorney's fees as part of the costs of any action for damages. If the court determines that the action for damages was brought without substantial justification, the court may award costs and reasonable attorney's fees to the employer.

(cf: P.L.2001, c.385, s.1)

9. Section 1 of P.L.1986, c.105 (C.34:19-1) is amended to read as follows:

1. This act shall be known and may be cited as the "Conscientious Employee and Intern Protection Act."

(cf: P.L.1986, c.105, s.1)

10. Section 2 of P.L.1986, c.105 (C.34:19-2) is amended to read as follows:

2. As used in **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.):

a. "Employer" means any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent and shall include all branches of State Government, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof.

b. (1) "Employee" means any individual who performs services for and under the control and direction of an employer for wages or other remuneration.

(2) “Intern” means an individual who performs services for an employer on a temporary basis whose work: (a) provides training or supplements training given in an educational environment such that the employability of the individual performing the work may be enhanced; (b) provides experience for the benefit of the individual performing the work; and (c) is performed under the supervision of existing staff. The term “intern” shall include individuals without regard to whether the employer pays them a salary or wage.

c. "Public body" means:

(1) the United States Congress, and State legislature, or any popularly-elected local governmental body, or any member or employee thereof;

(2) any federal, State, or local judiciary, or any member or employee thereof, or any grand or petit jury;

(3) any federal, State, or local regulatory, administrative, or public agency or authority, or instrumentality thereof;

(4) any federal, State, or local law enforcement agency, prosecutorial office, or police or peace officer;

(5) any federal, State or local department of an executive branch of government; or

(6) any division, board, bureau, office, committee or commission of any of the public bodies described in the above paragraphs of this subsection.

d. "Supervisor" means any individual with an employer's organization who has the authority to direct and control the work performance of the affected employee or intern, who has authority to take corrective action regarding the violation of the law, rule or regulation of which the employee or intern complains, or who has been designated by the employer on the notice required under section 7 of **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.).

e. "Retaliatory action" means the discharge, suspension or demotion of an employee or intern, or other adverse employment action taken against an employee or intern in the terms and conditions of the employment or internship.

f. "Improper quality of patient care" means, with respect to patient care, any practice, procedure, action or failure to act of an employer that is a health care provider which violates any law or any rule, regulation or declaratory ruling adopted pursuant to law, or any professional code of ethics.

(cf: P.L.1997, c.98, s.1)

11. Section 3 of P.L.1986, c.105 (C.34:19-3) is amended to read as follows:

3. An employer shall not take any retaliatory action against an employee or intern because the employee or intern does any of the following:

a. Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or another employer, with whom there is a business relationship, that the employee or intern reasonably believes:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, intern, former intern, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee or intern who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care; or

(2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee or intern reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, intern, former intern, retiree or pensioner of the employer or any governmental entity;

b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer, or another employer, with whom there is a business relationship, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, intern, former intern, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee or intern who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into the quality of patient care; or

c. Objects to, or refuses to participate in any activity, policy or practice which the employee or intern reasonably believes:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, intern, former intern, retiree or pensioner of the employer or any governmental entity, or, if the employee or intern is a licensed or certified health care professional, constitutes improper quality of patient care;

(2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee or intern reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, intern, former intern, retiree or pensioner of the employer or any governmental entity; or

(3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

(cf: P.L.2005, c.329, s.1)

12. Section 4 of P.L.1986, c.105 (C.34:19-4) is amended to read as follows:

4. The protection against retaliatory action provided by **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.) pertaining to disclosure to a public body shall not apply to an employee or intern who makes a disclosure to a public body unless the employee or intern has brought the activity, policy or practice in violation of a law, or a rule or regulation promulgated pursuant to law to the attention of a supervisor of the employee or intern by written notice and has afforded the employer a reasonable opportunity to correct the activity, policy or practice. Disclosure shall not be required where the employee or intern is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer or where the employee or intern reasonably fears physical harm as a result of the disclosure provided, however, that the situation is emergency in nature.

(cf: P.L.1986, c.105, s.4)

13. Section 5 of P.L.1986, c.105 (C.34:19-5) is amended to read as follows:

5. Upon a violation of any of the provisions of **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.), an aggrieved employee or former employee, or intern or former intern may, within one year, institute a civil action in a court of competent jurisdiction. Upon the application of any party, a jury trial shall be directed to try the validity of any claim under **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.) specified in the suit. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided by **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.) or any other statute. The court shall also order, where appropriate and to the fullest extent possible:

a. An injunction to restrain any violation of **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.) which is continuing at the time that the court issues its order;

b. The reinstatement of the employee or intern to the same position held before the retaliatory action, or to an equivalent position;

c. The reinstatement of full fringe benefits and seniority rights;

d. The compensation for all lost wages, benefits and other remuneration; and

e. The payment by the employer of reasonable costs, and attorney's fees.

In addition, the court or jury may order: the assessment of a civil fine of not more than $10,000 for the first violation of **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.) and not more than $20,000 for each subsequent violation, which shall be paid to the State Treasurer for deposit in the General Fund; punitive damages; or both a civil fine and punitive damages. In determining the amount of punitive damages, the court or jury shall consider not only the amount of compensatory damages awarded to the employee or intern, but also the amount of all damages caused to shareholders, investors, clients, patients, customers, employees, former employees, interns, former interns, retirees or pensioners of the employer, or to the public or any governmental entity, by the activities, policies or practices of the employer which the employee or intern disclosed, threatened to disclose, provided testimony regarding, objected to, or refused to participate in.

(cf: P.L.2005, c.329, s.2)

14. Section 6 of P.L1986, c.105 (C.34:19-6) is amended to read as follows:

6. A court, upon notice of motion in accordance with the Rules Governing the Courts of the State of New Jersey, may also order that reasonable attorneys' fees and court costs be awarded to an employer if the court determines that an action brought by an employee or intern under **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.) was without basis in law or in fact. However, an employee or intern shall not be assessed attorneys' fees under this section if, after exercising reasonable and diligent efforts after filing a suit, the employee or intern files a voluntary dismissal concerning the employer, within a reasonable time after determining that the employer would not be found to be liable for damages.

(cf: P.L.1986, c.105, s.6)

15. Section 7 of P.L.1986, c.105 (C.34:19-7) is amended to read as follows:

7. An employer shall conspicuously display, **[**and**]** annually distribute to all employees, and distribute to all interns at the time of their initial engagement in an internship, written or electronic notices of its employees' and interns’ protections, obligations, rights and procedures under **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.), and use other appropriate means to keep its employees and interns so informed. Each notice posted or distributed pursuant to this section shall be in English, Spanish and at the employer's discretion, any other language spoken by the majority of the employer's employees and interns. The notice shall include the name of the person or persons the employer has designated to receive written notifications pursuant to section 4 of **[**this act**]** P.L.1986, c.105 (C.34:19-1-4). The Commissioner of Labor and Workforce Development shall make available to employers a text of a notice fulfilling the requirements of this section and provide copies of the notice suitable for display and distribution to any employers who request the copies, charging them as much as is needed to pay the costs of the department. The commissioner shall also provide notices printed in a language other than English and Spanish, at the request of the employer.

The requirement that an employer **[**annually**]** distribute to all employees and interns written notices of the protections, obligations, rights and procedures provided to the employees and interns by the provisions of P.L.1986, c.105 (C.34:19-1 et seq.) shall not apply to any employer who has less than 10 employees and interns.

(cf: P.L.2004, c.148, s.1)

16. Section 8 of P.L.1986, c.105 (C.34:19-8) is amended to read as follows:

8. Nothing in **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.) shall be deemed to diminish the rights, privileges, or remedies of any employee or intern under any other federal or State law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with **[**this act**]** P.L.1986, c.105 (C.34:19-1 et seq.) shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, State law, rule or regulation or under the common law.

(cf: P.L.1986, c.105, s.8)

17. Section 1 of P.L.2006, c.53 (C.34:19-9) is amended to read as follows:

1. For the purposes of **[**this act**]** P.L.2006, c.53 (C.34:19-9 et seq.):

"Employer" means a person engaged in business who has employees or interns, including the State and any political subdivision or other instrumentality of the State.

"Employee" means any person engaged in service to an employer for wages, salary or other compensation.

“Intern” means an intern as defined in paragraph (2) of subsection b. of section 2 of P.L.1986, c.105 (C.34:19-2).

"Political matters" include political party affiliation and decisions to join or not join or participate in any lawful political, social, or community organization or activity.

(cf: P.L.2006, c.53, s.1)

18. Section 2 of P.L.2006, c.53 (C.34:19-10) is amended to read as follows:

2. No employer or employer's agent, representative or designee may, except as provided in section 3 of **[**this act**]** P.L.2006, c.53 (C.34:19-11), require its employees or interns to attend an employer-sponsored meeting or participate in any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinion about religious or political matters.

**[**This act**]** P.L.2006, c.53 (C.34:19-9 et seq.) shall not be construed as prohibiting an employer from permitting its employees or interns to voluntarily attend employer-sponsored meetings or providing other communications to the employees or interns, if the employer notifies the employees or interns that they may refuse to attend the meetings or accept the communications without penalty.

(cf: P.L.2006, c.53, s.2)

19. Section 3 of P.L.2006, c.53 (C.34:19-11) is amended to read as follows:

3. a. An employer or its agent, representative or designee may communicate to employees and interns information about religious or political matters that the employer is required by law to communicate, but only to the extent required by law.

b. Nothing in **[**this act**]** P.L.2006, c.53 (C.34:19-9 et seq.) shall prohibit:

(1) A religious organization from requiring its employees or interns to attend an employer-sponsored meeting or to participate in any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's religious beliefs, practices or tenets;

(2) A political organization or party from requiring its employees or interns to attend an employer-sponsored meeting or to participate in any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's political tenets or purposes; or

(3) An educational institution from requiring a student or instructor to attend lectures on political or religious matters that are part of the regular course work at the institution.

(cf: P.L.2006, c.53, s.3)

20. Section 4 of P.L.2006, c.53 (C.34:19-12) is amended to read as follows:

4. No employer or employer's agent, representative or designee shall discharge, discipline or otherwise penalize or threaten to discharge, discipline or otherwise penalize any employee or intern because the employee or intern, or a person acting on behalf of the employee or intern, makes a good faith report, verbally or in writing, of a violation or suspected violation of **[**this act**]** P.L.2006, c.53 (C.34:19-9 et seq.).

(cf: P.L.2006, c.53, s.4)

21. Section 5 of P.L.2006, c.53 (C.34:19-13) is amended to read as follows:

5. Any aggrieved employee or intern may enforce the provisions of **[**this act**]** P.L.2006, c.53 (C.34:19-9 et seq.) by means of a civil action brought no later than ninety days after the date of the alleged violation in a court of competent jurisdiction. The court shall award a prevailing employee or intern all appropriate relief, including any of the following which are applicable to the violation:

a. A restraining order against any continuing violation;

b. The reinstatement of the employee or intern to the employee's or intern’s former position or an equivalent position and the reestablishment of any employee benefits and seniority rights;

c. The payment of any lost wages, benefits or other remuneration; and

d. The payment of reasonable attorneys' fees and costs of the action.

In addition, the court may award the prevailing employee or intern punitive damages not greater than treble damages, or an assessment of a civil fine of not more than $1,000 for a first violation of **[**the act**]** P.L.2006, c.53 (C.34:19-9 et seq.) and not more than $5,000 for each subsequent violation, which shall be paid to the State Treasurer for deposit in the General Fund.

(cf: P.L.2006, c.53, s.5)

22. Section 6 of P.L.2006, c.53 (C.34:19-14) is amended to read as follows:

6. Nothing in **[**this act**]** P.L.2006, c.53 (C.34:19-9 et seq.) shall be construed to limit an employee's or intern’s right to bring a common law tort cause of action against an employer, including an action for wrongful termination, or to diminish or impair the rights of a person under any collective bargaining agreement.

(cf: P.L.2006, c.53, s.6)

23. This act shall take effect on the first day of the third month next following enactment, and apply to any violation against an intern occurring on or after the effective date.

STATEMENT

The bill designated the “New Jersey Intern Protection Act,” provides legal protections and remedies for persons engaged in internships with employers. It does so by adding interns to the provisions of the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.), the “Conscientious Employee Protection Act,” P.L.1986, c.105 (C.34:19-1 et seq.), and P.L.2006, c.53 (C.34:19-9 et seq.), sometimes referred to as the Worker Freedom From Employer Intimidation Act.

Under all three enactments, an intern would be defined as an individual who performs services for an employer on a temporary basis whose work:

(1) Provides training or supplements training given in an educational environment such that the employability of the individual performing the work may be enhanced;

(2) Provides experience for the benefit of the individual performing the work; and

(3) Is performed under the supervision of existing staff. The term “intern” includes individuals without regard to whether the employer pays them a salary or wage.

An intern would not only have recognized and enforceable legal protections from various forms of employer discrimination, retaliatory acts, and intimidation relative to religious and political matters in the workplace, the State would also have the authority, under the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.), to bring actions against employers. In addition, nothing within the provisions of this bill or the various past legislative acts amended by this bill would prevent an intern from seeking protections or receiving remedies pursuant to any applicable federal law, other State law, or the common law.