

SENATE, No. 2741

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JUNE 2, 2022

Sponsored by:

Senator ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Prohibits discrimination on basis of height or weight under “Law Against Discrimination.”

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning discrimination on the basis of height or weight
2 and amending P.L.1945, c.169, P.L.1954, c.198, and P.L.1992,
3 c.146.

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

7
8 1. Section 3 of P.L.1945, c.169 (C.10:5-3) is amended to read
9 as follows:

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

23 The Legislature further declares its opposition to such practices
24 of discrimination when directed against any person by reason of the
25 race, creed, color, national origin, ancestry, age, sex, gender
26 identity or expression, affectional or sexual orientation, marital
27 status, liability for service in the Armed Forces of the United States,
28 disability **[or]**, nationality, or height or weight of that person or that
29 person's family members, partners, members, stockholders,
30 directors, officers, managers, superintendents, agents, employees,
31 business associates, suppliers, or customers, in order that the
32 economic prosperity and general welfare of the inhabitants of the
33 State may be protected and ensured.

34 The Legislature further finds that because of discrimination,
35 people suffer personal hardships, and the State suffers a grievous
36 harm. The personal hardships include: economic loss; time loss;
37 physical and emotional stress; and in some cases severe emotional
38 trauma, illness, homelessness or other irreparable harm resulting
39 from the strain of employment controversies; relocation, search and
40 moving difficulties; anxiety caused by lack of information,
41 uncertainty, and resultant planning difficulty; career, education,
42 family and social disruption; and adjustment problems, which
43 particularly impact on those protected by this act. Such harms
44 have, under the common law, given rise to legal remedies, including
45 compensatory and punitive damages. The Legislature intends that

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.

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1 such damages be available to all persons protected by this act and
2 that this act shall be liberally construed in combination with other
3 protections available under the laws of this State.

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

5

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

8 4. All persons shall have the opportunity to obtain
9 employment, and to obtain all the accommodations, advantages,
10 facilities, and privileges of any place of public accommodation,
11 publicly assisted housing accommodation, and other real property
12 without discrimination because of race, creed, color, national origin,
13 ancestry, age, marital status, affectional or sexual orientation,
14 familial status, disability, liability for service in the Armed Forces
15 of the United States, nationality, sex, gender identity or expression
16 **【or】**, source of lawful income used for rental or mortgage
17 payments, or height or weight subject only to conditions and
18 limitations applicable alike to all persons. This opportunity is
19 recognized as and declared to be a civil right.

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

21

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

24 6. There is created in the Department of Law and Public Safety
25 a division known as "The Division on Civil Rights" with power to
26 prevent and eliminate discrimination in the manner prohibited by
27 this act against persons because of race, creed, color, national
28 origin, ancestry, age, marital status, affectional or sexual
29 orientation, gender identity or expression, familial status,
30 nationality, disability, **【or】**, sex **【or】**, because of their liability for
31 service in the Armed Forces of the United States, or height or
32 weight by employers, labor organizations, employment agencies or
33 other persons and to take other actions against discrimination
34 because of race, creed, color, national origin, ancestry, marital
35 status, sex, familial status, nationality, disability, **【or】** age **【or】**,
36 because of their liability for service in the Armed Forces of the
37 United States, or height or weight, as herein provided; and the
38 division created hereunder is given general jurisdiction and
39 authority for such purposes.

40 (cf: P.L.2006, c.100, s.5)

41

42 4. Section 8 of P.L.1945, c.169 (C.10:5-8) is amended to read as
43 follows:

44 8. The Attorney General shall:

45 a. Exercise all powers of the division not vested in the
46 commission.

47 b. Administer the work of the division.

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1 c. Organize the division into sections, which shall include but
2 not be limited to a section which shall receive, investigate, and act
3 upon complaints alleging discrimination against persons because of
4 race, creed, color, national origin, ancestry, age, marital status,
5 affectional or sexual orientation, gender identity or expression,
6 familial status, disability, nationality **[or]**, sex **[or]**, because of
7 their liability for service in the Armed Forces of the United States,
8 or height or weight; and another which shall, in order to eliminate
9 prejudice and to further good will among the various racial and
10 religious and nationality groups in this State, study, recommend,
11 prepare and implement, in cooperation with such other departments
12 of the State Government or any other agencies, groups or entities
13 both public and private, such educational and human relations
14 programs as are consonant with the objectives of this act; and
15 prescribe the organization of said sections and the duties of his
16 subordinates and assistants.

17 d. Appoint a Director of the Division on Civil Rights, who
18 shall act for the Attorney General, in the Attorney General's place
19 and with the Attorney General's powers, which appointment shall be
20 subject to the approval of the commission and the Governor, a
21 deputy director and such assistant directors, field representatives
22 and assistants as may be necessary for the proper administration of
23 the division and fix their compensation within the limits of
24 available appropriations. The director, deputy director, assistant
25 directors, field representatives and assistants shall not be subject to
26 the Civil Service Act and shall be removable by the Attorney
27 General at will.

28 e. Appoint such clerical force and employees as the Attorney
29 General may deem necessary and fix their duties, all of whom shall
30 be subject to the Civil Service Act.

31 f. Maintain liaison with local and State officials and agencies
32 concerned with matters related to the work of the division.

33 g. Adopt, promulgate, amend, and rescind suitable rules and
34 regulations to carry out the provisions of this act.

35 h. Conduct investigations, receive complaints and conduct
36 hearings thereon other than those complaints received and hearings
37 held pursuant to the provisions of this act.

38 i. In connection with any investigation or hearing held
39 pursuant to the provisions of this act, subpoena witnesses, compel
40 their attendance, administer oaths, take the testimony of any person,
41 under oath, and, in connection therewith, require the production for
42 examination of any books or papers relating to any subject matter
43 under investigation or in question by the division and conduct such
44 discovery procedures which may include the taking of
45 interrogatories and oral depositions as shall be deemed necessary by
46 the Attorney General in any investigation. The Attorney General
47 may make rules as to the issuance of subpoenas by the director.
48 The failure of any witness when duly subpoenaed to attend, give

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1 testimony, or produce evidence shall be punishable by the Superior
2 Court of New Jersey in the same manner as such failure is
3 punishable by such court in a case therein pending.

4 j. Issue such publications and such results of investigations
5 and research tending to promote good will and to minimize or
6 eliminate discrimination because of race, creed, color, national
7 origin, ancestry, age, marital status, affectional or sexual
8 orientation, gender identity or expression, familial status, disability,
9 nationality **[or]**, sex, or height or weight, as the commission shall
10 direct, subject to available appropriations.

11 k. Render each year to the Governor and Legislature a full
12 written report of all the activities of the division.

13 l. Appoint, subject to the approval of the commission, a panel
14 of not more than five hearing examiners, each of whom shall be
15 duly licensed to practice law in this State for a period of at least five
16 years, and each to serve for a term of one year and until his
17 successor is appointed, any one of whom the director may designate
18 in his place to conduct any hearing and recommend findings of fact
19 and conclusions of law. The hearing examiners shall receive such
20 compensation as may be determined by the Attorney General,
21 subject to available appropriations.

22 (cf: P.L.2006, c.100, s.6)

23

24 5. Section 1 of P.L.1954, c.198 (C.10:5-9.1) is amended to read
25 as follows:

26 1. The Division on Civil Rights in the Department of Law and
27 Public Safety shall enforce the laws of this State against
28 discrimination in housing built with, or leased with the assistance
29 of, public funds or public assistance, pursuant to any law, and in
30 real property, as defined in the law hereby supplemented, because
31 of race, religious principles, color, national origin, ancestry, marital
32 status, affectional or sexual orientation, familial status, disability,
33 liability for service in the Armed Forces of the United States,
34 nationality, sex, gender identity or expression **[or]**, source of lawful
35 income used for rental or mortgage payments, or height or weight.
36 The said laws shall be so enforced in the manner prescribed in the
37 act to which this act is a supplement.

38 (cf: P.L.2017, c.184, s.2)

39

40 6. Section 9 of P.L.1945, c.169 (C.10:5-10) is amended to read
41 as follows:

42 9. The commission shall:

43 a. Consult with and advise the Attorney General with respect to
44 the work of the division.

45 b. Survey and study the operations of the division.

46 c. Report to the Governor and the Legislature with respect to
47 such matters relating to the work of the division and at such times
48 as it may deem in the public interest.

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1 The mayors or chief executive officers of the municipalities in
2 the State may appoint local commissions on civil rights to aid in
3 effectuating the purposes of this act. Such local commissions shall
4 be composed of representative citizens serving without
5 compensation. Such commissions shall attempt to foster through
6 community effort or otherwise, good will, cooperation and
7 conciliation among the groups and elements of the inhabitants of
8 the community, and they may be empowered by the local governing
9 bodies to make recommendations to them for the development of
10 policies and procedures in general and for programs of formal and
11 informal education that will aid in eliminating all types of
12 discrimination based on race, creed, color, national origin, ancestry,
13 age, marital status, affectional or sexual orientation, gender identity
14 or expression, familial status, disability, nationality **[or]**, sex or
15 height or weight.

16 (cf: P.L.2006, c.100, s.8)

17

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

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

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

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

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

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

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

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

44 Nothing in this subsection shall prohibit the application of the
45 doctrine of "continuing violation" or the "discovery rule" to any
46 appropriate claim as those doctrines currently exist in New Jersey
47 common law. It shall be an unlawful employment practice to
48 require employees or prospective employees to consent to a

1 shortened statute of limitations or to waive any of the protections
2 provided by the "Law Against Discrimination," P.L.1945, c.169
3 (C.10:5-1 et seq.).

4 b. For a labor organization, because of the race, creed, color,
5 national origin, ancestry, age, marital status, civil union status,
6 domestic partnership status, affectional or sexual orientation,
7 gender identity or expression, disability, pregnancy or
8 breastfeeding, or sex of any individual, or because of the liability
9 for service in the Armed Forces of the United States or nationality
10 of any individual, or because of the height or weight of any
11 individual, except in any circumstance in which the height or
12 weight of an individual is a bona fide occupational qualification, to
13 exclude or to expel from its membership such individual or to
14 discriminate in any way against any of its members, against any
15 applicant for, or individual included in, any apprentice or other
16 training program or against any employer or any individual
17 employed by an employer; provided, however, that nothing herein
18 contained shall be construed to bar a labor organization from
19 excluding from its apprentice or other training programs any person
20 on the basis of sex in those certain circumstances where sex is a
21 bona fide occupational qualification reasonably necessary to the
22 normal operation of the particular apprentice or other training
23 program.

24 c. For any employer or employment agency to print or circulate
25 or cause to be printed or circulated any statement, advertisement or
26 publication, or to use any form of application for employment, or to
27 make an inquiry in connection with prospective employment, which
28 expresses, directly or indirectly, any limitation, specification or
29 discrimination as to race, creed, color, national origin, ancestry,
30 age, marital status, civil union status, domestic partnership status,
31 affectional or sexual orientation, gender identity or expression,
32 disability, nationality, pregnancy or breastfeeding, or sex or liability
33 of any applicant for employment for service in the Armed Forces of
34 the United States, or because of the height or weight of any
35 individual, except in any circumstance in which the height or
36 weight of an individual is a bona fide occupational qualification, or
37 any intent to make any such limitation, specification or
38 discrimination, unless based upon a bona fide occupational
39 qualification.

40 d. For any person to take reprisals against any person because
41 that person has opposed any practices or acts forbidden under this
42 act or because that person has sought legal advice regarding rights
43 under this act, shared relevant information with legal counsel,
44 shared information with a governmental entity, or filed a complaint,
45 testified or assisted in any proceeding under this act or to coerce,
46 intimidate, threaten or interfere with any person in the exercise or
47 enjoyment of, or on account of that person having aided or

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1 encouraged any other person in the exercise or enjoyment of, any
2 right granted or protected by this act.

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

6 f. (1) For any owner, lessee, proprietor, manager,
7 superintendent, agent, or employee of any place of public
8 accommodation directly or indirectly to refuse, withhold from or
9 deny to any person any of the accommodations, advantages,
10 facilities or privileges thereof, or to discriminate against any person
11 in the furnishing thereof, or directly or indirectly to publish,
12 circulate, issue, display, post or mail any written or printed
13 communication, notice, or advertisement to the effect that any of
14 the accommodations, advantages, facilities, or privileges of any
15 such place will be refused, withheld from, or denied to any person
16 on account of the race, creed, color, national origin, ancestry,
17 marital status, civil union status, domestic partnership status,
18 pregnancy or breastfeeding, sex, gender identity or expression,
19 affectional or sexual orientation, disability, liability for service in
20 the Armed Forces of the United States or nationality of such person,
21 or that the patronage or custom thereof of any person of any
22 particular race, creed, color, national origin, ancestry, marital status,
23 civil union status, domestic partnership status, pregnancy or
24 breastfeeding status, sex, gender identity or expression, affectional
25 or sexual orientation, disability, liability for service in the Armed
26 Forces of the United States **[or]**, nationality, or because of the
27 height or weight of any individual, is unwelcome, objectionable or
28 not acceptable, desired or solicited, and the production of any such
29 written or printed communication, notice or advertisement,
30 purporting to relate to any such place and to be made by any owner,
31 lessee, proprietor, superintendent or manager thereof, shall be
32 presumptive evidence in any action that the same was authorized by
33 such person; provided, however, that nothing contained herein shall
34 be construed to bar any place of public accommodation which is in
35 its nature reasonably restricted exclusively to individuals of one
36 sex, and which shall include but not be limited to any summer
37 camp, day camp, or resort camp, bathhouse, dressing room,
38 swimming pool, gymnasium, comfort station, dispensary, clinic or
39 hospital, or school or educational institution which is restricted
40 exclusively to individuals of one sex, provided individuals shall be
41 admitted based on their gender identity or expression, from
42 refusing, withholding from or denying to any individual of the
43 opposite sex any of the accommodations, advantages, facilities or
44 privileges thereof on the basis of sex; provided further, that the
45 foregoing limitation shall not apply to any restaurant as defined in
46 R.S.33:1-1 or place where alcoholic beverages are served.
47 Notwithstanding any provision of law to the contrary, an owner,
48 lessee, proprietor, manager, superintendent, agent, or employee of

1 any place of public accommodation may deny accommodations,
2 advantages, facilities, or privileges of any such place on the basis of
3 height or weight for bona fide safety reasons.

4 (2) Notwithstanding the definition of "a place of public
5 accommodation" as set forth in subsection 1. of section 5 of
6 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
7 manager, superintendent, agent, or employee of any private club or
8 association to directly or indirectly refuse, withhold from or deny to
9 any individual who has been accepted as a club member and has
10 contracted for or is otherwise entitled to full club membership any
11 of the accommodations, advantages, facilities or privileges thereof,
12 or to discriminate against any member in the furnishing thereof on
13 account of the race, creed, color, national origin, ancestry, marital
14 status, civil union status, domestic partnership status, pregnancy or
15 breastfeeding, sex, gender identity, or expression, affectional or
16 sexual orientation, disability, liability for service in the Armed
17 Forces of the United States **【or】**, nationality **【of such person】**, or
18 because of the height or weight of any individual.

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

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

32 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
33 to deny to or withhold from any person or group of persons any real
34 property or part or portion thereof because of race, creed, color,
35 national origin, ancestry, marital status, civil union status, domestic
36 partnership status, pregnancy or breastfeeding, sex, gender identity
37 or expression, affectional or sexual orientation, familial status,
38 disability, liability for service in the Armed Forces of the United
39 States, nationality, **【or】** source of lawful income used for rental or
40 mortgage payments, or because of the height or weight of any
41 individual;

42 (2) To discriminate against any person or group of persons
43 because of race, creed, color, national origin, ancestry, marital
44 status, civil union status, domestic partnership status, pregnancy or
45 breastfeeding, sex, gender identity or expression, affectional or
46 sexual orientation, familial status, disability, liability for service in
47 the Armed Forces of the United States, nationality **【or】**, source of
48 lawful income used for rental or mortgage payments, or because of

1 the height or weight of any individual in the terms, conditions or
2 privileges of the sale, rental or lease of any real property or part or
3 portion thereof or in the furnishing of facilities or services in
4 connection therewith;

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

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

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

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

47 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
48 sale, rental, lease, assignment, or sublease any real property or part

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1 or portion thereof to any person or group of persons or to refuse to
2 negotiate for the sale, rental, lease, assignment, or sublease of any
3 real property or part or portion thereof to any person or group of
4 persons because of race, creed, color, national origin, ancestry,
5 marital status, civil union status, domestic partnership status,
6 familial status, pregnancy or breastfeeding, sex, gender identity or
7 expression, affectional or sexual orientation, liability for service in
8 the Armed Forces of the United States, disability, nationality, **[or]**
9 source of lawful income used for rental or mortgage payments, or
10 because of the height or weight of any individual, or to represent
11 that any real property or portion thereof is not available for
12 inspection, sale, rental, lease, assignment, or sublease when in fact
13 it is so available, or otherwise to deny or withhold any real property
14 or any part or portion of facilities thereof to or from any person or
15 group of persons because of race, creed, color, national origin,
16 ancestry, marital status, civil union status, domestic partnership
17 status, familial status, pregnancy or breastfeeding, sex, gender
18 identity or expression, affectional or sexual orientation, disability,
19 liability for service in the Armed Forces of the United States, **[or]**
20 nationality, or because of the height or weight of any individual;

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

32 (3) To print, publish, circulate, issue, display, post, or mail, or
33 cause to be printed, published, circulated, issued, displayed, posted
34 or mailed any statement, advertisement, publication or sign, or to
35 use any form of application for the purchase, rental, lease,
36 assignment, or sublease of any real property or part or portion
37 thereof or to make any record or inquiry in connection with the
38 prospective purchase, rental, lease, assignment, or sublease of any
39 real property or part or portion thereof which expresses, directly or
40 indirectly, any limitation, specification or discrimination as to race,
41 creed, color, national origin, ancestry, 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, nationality, **[or]** source of lawful
46 income used for rental or mortgage payments, or because of the
47 height or weight of any individual, or any intent to make any such
48 limitation, specification or discrimination, and the production of

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

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

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

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

33 (1) To discriminate against any person or group of persons
34 because of race, creed, color, national origin, ancestry, marital
35 status, civil union status, domestic partnership status, pregnancy or
36 breastfeeding, sex, gender identity or expression, affectional or
37 sexual orientation, disability, liability for service in the Armed
38 Forces of the United States, familial status **[or]**, nationality, or the
39 height or weight of any individual, in the granting, withholding,
40 extending, modifying, renewing, or purchasing, or in the fixing of
41 the rates, terms, conditions or provisions of any such loan,
42 extension of credit or financial assistance or purchase thereof or in
43 the extension of services in connection therewith;

44 (2) To use any form of application for such loan, extension of
45 credit or financial assistance or to make record or inquiry in
46 connection with applications for any such loan, extension of credit
47 or financial assistance which expresses, directly or indirectly, any
48 limitation, specification or discrimination as to race, creed, color,

1 national origin, ancestry, marital status, civil union status, domestic
2 partnership status, pregnancy or breastfeeding, sex, gender identity
3 or expression, affectional or sexual orientation, disability, liability
4 for service in the Armed Forces of the United States, familial status
5 **【or】**, nationality, or because of the height or weight of any
6 individual, or any intent to make any such limitation, specification
7 or discrimination; unless otherwise required by law or regulation to
8 retain or use such information;

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

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

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

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

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

45 l. For any person to refuse to buy from, sell to, lease from or
46 to, license, contract with, or trade with, provide goods, services or
47 information to, or otherwise do business with any other person on
48 the basis of the race, creed, color, national origin, ancestry, age,

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

15 m. For any person to:

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

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

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

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

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

6 (2) Boycotting, commercially blacklisting or refusing to buy
7 from, sell to, lease from or to, license, contract with, provide goods,
8 services or information to, or otherwise do business with any person
9 because that person has not done or refuses to do any such act or
10 any act prohibited by this subsection; provided that this subsection
11 shall not prohibit refusals or other actions either pertaining to
12 employee-employer collective bargaining, labor disputes, or unfair
13 labor practices, or made or taken in connection with a protest of
14 unlawful discrimination or unlawful employment practices.

15 o. For any multiple listing service, real estate brokers'
16 organization or other service, organization or facility related to the
17 business of selling or renting dwellings to deny any person access
18 to or membership or participation in such organization, or to
19 discriminate against such person in the terms or conditions of such
20 access, membership, or participation, on account of race, creed,
21 color, national origin, ancestry, age, marital status, civil union
22 status, domestic partnership status, familial status, pregnancy or
23 breastfeeding, sex, gender identity or expression, affectional or
24 sexual orientation, disability, liability for service in the Armed
25 Forces of the United States **[or]** nationality, or because of the
26 height or weight of any individual.

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

33 q. (1) For any employer to impose upon a person as a condition
34 of obtaining or retaining employment, including opportunities for
35 promotion, advancement or transfers, any terms or conditions that
36 would require a person to violate or forego a sincerely held
37 religious practice or religious observance, including but not limited
38 to the observance of any particular day or days or any portion
39 thereof as a Sabbath or other holy day in accordance with the
40 requirements of the religion or religious belief, unless, after
41 engaging in a bona fide effort, the employer demonstrates that it is
42 unable to reasonably accommodate the employee's religious
43 observance or practice without undue hardship on the conduct of the
44 employer's business. Notwithstanding any other provision of law to
45 the contrary, an employee shall not be entitled to premium wages or
46 premium benefits for work performed during hours to which those
47 premium wages or premium benefits would ordinarily be
48 applicable, if the employee is working during those hours only as an

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

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

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

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

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

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

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

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

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

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

47 (d) (i) The provisions of this subsection q. shall be applicable
48 only to reasonable accommodations of religious observances and

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1 shall not supersede any definition of undue hardship or standards
2 for reasonable accommodation of the disabilities of employees.

3 (ii) This subsection q. shall not apply where the uniform
4 application of terms and conditions of attendance to employees is
5 essential to prevent undue hardship to the employer. The burden of
6 proof regarding the applicability of this subparagraph (d) shall be
7 upon the employer.

8 r. For any employer to take reprisals against any employee for
9 requesting from, discussing with, or disclosing to, any other
10 employee or former employee of the employer, a lawyer from
11 whom the employee seeks legal advice, or any government agency
12 information regarding the job title, occupational category, and rate
13 of compensation, including benefits, of the employee or any other
14 employee or former employee of the employer, or the gender, race,
15 ethnicity, military status, or national origin of the employee or any
16 other employee or former employee of the employer, regardless of
17 whether the request was responded to, or to require, as a condition
18 of employment, any employee or prospective employee to sign a
19 waiver, or to otherwise require an employee or prospective
20 employee to agree, not to make those requests or disclosures.
21 Nothing in this subsection shall be construed to require an
22 employee to disclose such information about the employee herself
23 to any other employee or former employee of the employer or to
24 any authorized representative of the other employee or former
25 employee.

26 s. For an employer to treat, for employment-related purposes, a
27 woman employee that the employer knows, or should know, is
28 affected by pregnancy or breastfeeding in a manner less favorable
29 than the treatment of other persons not affected by pregnancy or
30 breastfeeding but similar in their ability or inability to work. In
31 addition, an employer of an employee who is a woman affected by
32 pregnancy shall make available to the employee reasonable
33 accommodation in the workplace, such as bathroom breaks, breaks
34 for increased water intake, periodic rest, assistance with manual
35 labor, job restructuring or modified work schedules, and temporary
36 transfers to less strenuous or hazardous work, for needs related to
37 the pregnancy when the employee, based on the advice of her
38 physician, requests the accommodation, and, in the case of **[a]** an
39 employee breast feeding her infant child, the accommodation shall
40 include reasonable break time each day to the employee and a
41 suitable room or other location with privacy, other than a toilet stall,
42 in close proximity to the work area for the employee to express
43 breast milk for the child, unless the employer can demonstrate that
44 providing the accommodation would be an undue hardship on the
45 business operations of the employer. The employer shall not in any
46 way penalize the employee in terms, conditions or privileges of
47 employment for requesting or using the accommodation. Workplace
48 accommodation provided pursuant to this subsection and paid or

1 unpaid leave provided to an employee affected by pregnancy or
2 breastfeeding shall not be provided in a manner less favorable than
3 accommodations or leave provided to other employees not affected
4 by pregnancy or breastfeeding but similar in their ability or inability
5 to work. This subsection shall not be construed as otherwise
6 increasing or decreasing any employee's rights under law to paid or
7 unpaid leave in connection with pregnancy or breastfeeding.

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

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

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

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

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

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

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

46 (5) That the factors are job-related with respect to the position
47 in question and based on a legitimate business necessity. A factor
48 based on business necessity shall not apply if it is demonstrated that

1 there are alternative business practices that would serve the same
2 business purpose without producing the wage differential.

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

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

18

19 8. Section 12 of P.L.1992, c.146 (C.10:5-12.5) is amended to
20 read as follows:

21 12. a. It shall be an unlawful discrimination for a municipality,
22 county, or other local civil or political subdivision of the State of
23 New Jersey, or an officer, employee, or agent thereof, to exercise
24 the power to regulate land use or housing in a manner that
25 discriminates on the basis of race, creed, color, national origin,
26 ancestry, marital status, familial status, sex, gender identity or
27 expression, liability for service in the Armed Forces of the United
28 States, nationality, **[or]**, disability, or because of the height or
29 weight of any individual.

30 b. The provisions of subsection a. of this section may only be
31 enforced by initiating an action in Superior Court pursuant to
32 paragraph (2) of subsection a. of section 12 of P.L.1945, c.169
33 (C.10:5-13). The restrictions of this subsection shall not apply to
34 claims alleging discrimination in housing owned or managed by a
35 municipality, county or other local civil or political subdivision of
36 the State of New Jersey where such discrimination is otherwise
37 prohibited by section 11 of P.L.1945, c.169 (C.10:5-12).

38 (cf: P.L.2019, c.436, s.4)

39

40 9. This act shall take effect immediately.

41

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STATEMENT

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45 This bill prohibits discrimination on the basis of height or weight
46 under the "Law Against Discrimination" (LAD).

47 Studies have documented that individuals are discriminated
48 against for their height or weight. Under current State law, this

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1 discrimination is permissible. This bill is modeled after the civil
2 rights law in Michigan, which prohibits discrimination in
3 employment, education, housing, public accommodations, and
4 public service on the basis of height or weight, among other reasons
5 for discrimination. The bill provides exceptions for employment
6 and public accommodation for bone fide occupational qualifications
7 and safety reasons, respectively.