

ASSEMBLY, No. 3446

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED FEBRUARY 1, 2024

Sponsored by:

Assemblywoman MITCHELLE DRULIS

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District 35 (Bergen and Passaic)

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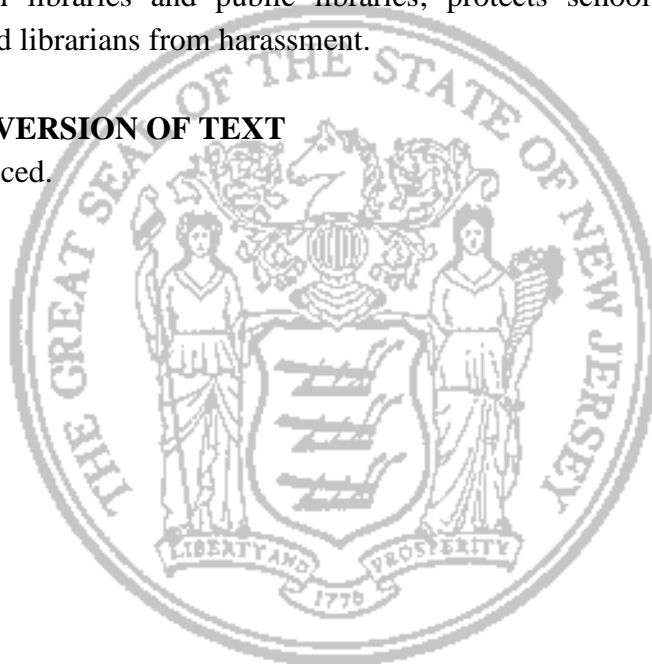
Assemblyman Danielsen and Assemblywoman Bagolie

SYNOPSIS

"Freedom to Read Act"; establishes requirements for library material in public school libraries and public libraries; protects school library media specialists and librarians from harassment.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/6/2024)

1 AN ACT concerning public school libraries and public libraries,
2 supplementing Title 18A of the New Jersey Statutes, and
3 amending N.J.S.2C:34-3 and P.L.1945, c.169.

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

7
8 1. (New section) Sections 1 through 12 of P.L. , c.
9 (C.) (pending before the Legislature as this bill) shall be
10 known and may be cited as the "Freedom to Read Act."

11
12 2. (New section) The Legislature finds and declares that:

13 a. The freedom to read is a human right, constitutionally
14 protected by the First Amendment of the United States Constitution,
15 and individuals have the right to free inquiry and the right to form
16 their own opinions.

17 b. The freedom to read does not require a person to agree with
18 topics or themes within a material, but instead allows a reader to
19 explore and engage with differing perspectives to form and inform
20 their own views.

21 c. Since Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393
22 U.S. 503 (1969), it has been well established that students do not
23 "shed their constitutional rights to freedom of speech or expression
24 at the schoolhouse gate[,]" and, as such, students have a right to
25 access a diverse range of age-relevant information, stories,
26 perspectives, and ideas.

27 d. In Bd. of Ed. v. Pico, 457 U.S. 853 (1982), the United
28 States Supreme Court recognized that school libraries are
29 "completely voluntary on the part of students[,]" a student's
30 selection of books from a school library "is entirely a matter of free
31 choice[,]" and the school library affords a student "an opportunity
32 at self-education and individual enrichment that is wholly optional."

33 e. School libraries and public libraries, as centers for voluntary
34 inquiry, play a unique role in promoting intellectual freedom,
35 providing equitable access to learning resources, and promoting
36 democracy by providing service to all regardless of race, ethnicity,
37 creed, age, ability, gender, or socio-economic status.

38 f. School library media specialists and librarians are essential
39 members of the community; as trained professionals, they help
40 young people of all backgrounds find and interpret the information
41 they need to succeed in school and prepare for college, careers, and
42 life.

43 g. School library media specialists and librarians receive
44 extensive professional training that prepares them to develop and
45 curate collections designed to meet the broad and varied interests

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

Matter underlined thus is new matter.

1 and needs of their communities and students, which is based on a
2 variety of factors, including pedagogical value, student interest, and
3 the age-appropriateness of the material.

4 h. Despite this, school library media specialists and librarians
5 have been targeted, harassed, and defamed for providing young
6 people access to library material.

7 i. Therefore, it is necessary and proper for the Legislature to
8 protect the freedom of New Jersey's residents to read, for school
9 libraries and public libraries to acquire and maintain materials
10 without external limitations, to recognize that school library media
11 specialists and librarians are trained to curate and develop
12 collections, and to protect school library media specialists and
13 librarians from unnecessary and unwarranted harassment and
14 defamation for performance of their duties.

15

16 3. (New section) As used in sections 4 through 7
17 of P.L. _____, c. _____ (C. _____) (pending before the
18 Legislature as this bill):

19 "Diverse and inclusive material" means any material that reflects
20 any protected class as enumerated in the "Law Against
21 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.); material
22 produced by an author notwithstanding the author's membership in
23 a protected class as enumerated in the "Law Against
24 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.); and material
25 that contains the author's points of view concerning contemporary
26 problems and issues, whether international, national, or local; but
27 excludes content that is inappropriate for grades and age groups
28 served by the school library.

29 "Emotional distress" means significant mental suffering or
30 distress.

31 "Harassment" or "harasses" means a singular act that is severe or
32 pervasive, or a series of acts over any period of time directed at a
33 specific person that serves no legitimate purpose and would cause,
34 or has caused, a reasonable person to suffer emotional distress.

35 "Library material" means any material including, but not limited
36 to, nonfiction and fiction books; magazines; reference books;
37 supplementary titles; multimedia and digital material; software and
38 instructional material and other material not required as part of
39 classroom instruction, belonging to, on loan to, or otherwise in the
40 custody of a school library.

41

42 4. (New section) a. A board of education shall adopt a policy
43 on the curation of library material within a school library. When
44 developing the policy, the board shall review the model policy
45 established by the Commissioner of Education pursuant to
46 subsection b. of this section. The board shall have control over the
47 content of the policy, except that the policy shall, at a minimum:

- 1 (1) recognize that library material should be provided for the
2 interest, information, and enlightenment of all students and should
3 present diverse points of view in the collection as a whole;
- 4 (2) require student access to age- and grade-appropriate diverse
5 and inclusive material;
- 6 (3) acknowledge that library material should not be excluded
7 from a school library because of the origin, background, or views of
8 those contributing to its creation;
- 9 (4) provide access to library material that is relevant to the
10 research, independent reading interests, and educational needs of
11 students based on a student's age, development, or grade level;
- 12 (5) recognize the importance of school libraries as centers for
13 voluntary inquiry and the dissemination of information and ideas;
- 14 (6) promote the free expression and free access to ideas by
15 students by prohibiting the censorship of library material;
- 16 (7) acknowledge that a school library media specialist is
17 professionally trained to curate and develop the school library
18 collection that provides students with access to the widest array of
19 age- and grade-appropriate library material available to schools; and
20 (8) establish a procedure for a school library media specialist to
21 review library material within a school library on an ongoing basis,
22 which shall include, but not be limited to: the library material's
23 relevance; the condition of the library material; the availability of
24 duplicates; the availability of more recent age; or grade-appropriate
25 material; and the continued demand for the library material.
- 26 b. To assist boards of education in developing a policy on the
27 curation of library material within a school library, the
28 commissioner shall develop a model policy. In developing the
29 model policy, the commissioner shall consult with the State
30 Librarian and the New Jersey Association of School Librarians.
31 The model policy shall be updated as the commissioner deems
32 necessary.
- 33
- 34 5. (New section) a. A board of education shall adopt a policy
35 establishing a procedure regarding a request for removal of library
36 material within a school library.
- 37 b. The board shall have control over the policy, except that the
38 policy shall, at a minimum:
 - 39 (1) provide for the creation of a request for removal form that
40 may be submitted by an individual with a vested interest to the
41 principal of the school in which the library material is challenged to
42 initiate a review of the material. An individual with a vested
43 interest shall include any teaching staff member employed by the
44 board of education, any parent or guardian of a student enrolled in
45 the school district at the time the form is filed, and any student
46 enrolled in the district at the time the form is filed;

1 (2) require the principal or principal's designee to appoint a
2 review committee within 10 school days of receiving a request for
3 removal form, consisting of:

- 4 (a) the principal or the principal's designee;
- 5 (b) the school library media specialist or a teaching staff
6 member similarly trained;
- 7 (c) a representative selected by the board of education;
- 8 (d) at least one grade-appropriate teacher familiar with the
9 library material, provided the teacher selected is not the individual
10 who submitted the form;
- 11 (e) a parent or guardian of a student enrolled in the school
12 district, provided the parent or guardian selected is not the
13 individual who submitted the form;
- 14 (f) if the individual who submitted the form is enrolled in
15 grades nine through 12, a student enrolled in the district, provided
16 the student selected is not the individual who submitted the form;
17 and

18 (g) any additional members the principal deems necessary;

19 (3) require that a challenged library material remain within the
20 school library and available for a student to reserve, check out, or
21 access until there is a final decision reached by the board of
22 education pursuant to paragraph (5) of this subsection;

23 (4) require the review committee evaluate the request for
24 removal form, review the challenged library material, and report its
25 recommendations on whether to remove the library material to the
26 board of education within 30 school days from the date of receiving
27 the form. A copy of the committee's report shall also be provided
28 to the individual with a vested interest who filed the form and the
29 principal; and

30 (5) require the board of education to review the committee's
31 report and make a final determination on whether the library
32 material is to be removed from the school library. The board shall
33 provide a written statement of reasons for:

- 34 (a) the removal or non-removal of a library material; and
- 35 (b) any final determination that is contrary to the
36 recommendations of the review committee.

37

38 6. (New section) a. Notwithstanding any other provision of
39 law to the contrary, a board of education shall ensure that each
40 school in the district includes diverse and inclusive material as part
41 of its library material.

42 b. A board of education shall allow a student to reserve, check
43 out, or access any age- and grade-appropriate library material,
44 including diverse and inclusive material.

45

46 7. (New section) a. A school library media specialist or any
47 other teaching staff member that engages in activities as required by
48 sections 4 through 6 of P.L. , c. (C.) (pending

1 before the Legislature as this bill) shall be immune from criminal
2 and civil liability arising from good faith actions performed
3 pursuant to the provisions of those sections.

4 b. (1) A school library media specialist or any other teaching
5 staff member that engages in activities as required by sections 4
6 through 6 of P.L. , c. (C.) (pending before
7 the Legislature as this bill) shall have a civil cause of action for
8 emotional distress, defamation, libel, slander, damage to reputation,
9 or any other relevant tort, against any person who harasses the
10 school library media specialist or any other teaching staff member
11 for complying with the provisions of those sections.

12 (2) If the school library media specialist or any other teaching
13 staff member that engages in activities as required by sections 4
14 through 6 of P.L. , c. (C.) (pending before
15 the Legislature as this bill) is the prevailing party in the civil cause
16 of action, the school library media specialist or teaching staff
17 member shall be entitled to an award of any reasonable attorney's
18 fees and costs of suit incurred, and any injunctive relief as the court
19 may deem necessary to avoid the defendant's continued violation.
20

21 8. (New section) As used in sections 9 through 12 of P.L. , c.
22 (C.) (pending before the Legislature as this bill):

23 "Diverse and inclusive material" means material that reflects any
24 protected class as enumerated in the "Law Against Discrimination,"
25 P.L.1945, c.169 (C.10:5-1 et seq.); material produced by an author
26 notwithstanding the author's membership in a protected class as
27 enumerated in the "Law Against Discrimination," P.L.1945, c.169
28 (C.10:5-1 et seq.); and material that contains the author's points of
29 view concerning contemporary problems and issues, whether
30 international, national or local.

31 "Emotional distress" means significant mental suffering or
32 distress.

33 "Governing body" means a board of trustees, director or other
34 chief administrative officer, a county library commission, or board
35 of county commissioners of a public library.

36 "Harassment" or "harasses" means a singular act that is severe or
37 pervasive, or a series of acts over any period of time directed at a
38 specific person that serves no legitimate purpose and would cause,
39 or has caused, a reasonable person to suffer emotional distress.

40 "Library material" means any material including, but not limited
41 to, nonfiction and fiction books; magazines; reference books;
42 supplementary titles; multimedia and digital material; software and
43 instructional material, belonging to, on loan to, or otherwise in the
44 custody of a public library.

45 "Public library" means a library that serves, free of charge, all
46 residents of an area as established pursuant to chapter 33 or chapter
47 54 of Title 40 of the Revised Statutes, and receives financial
48 support, in whole or in part, from public funds; or a library

1 established pursuant to N.J.S.15A:1-1 et seq. and receiving public
2 funds pursuant to R.S.40:54-35.

3

4 9. (New section) a. In addition to the duties prescribed in
5 section 18 of P.L.1969, c.158 (C.18A:73-33), the State Librarian
6 shall establish a model policy on the curation of library material
7 within a public library. In developing the model policy, the State
8 Librarian shall consult with the New Jersey Library Association.

9 b. The model policy shall, at a minimum:

10 (1) recognize that public libraries serve as centers for voluntary
11 inquiry and the dissemination of information and ideas;

12 (2) promote the free expression and free access to ideas by
13 residents by prohibiting the censorship of library material;

14 (3) acknowledge that library material should not be excluded
15 from a public library because of the origin, background, or views of
16 those contributing to its creation;

17 (4) require that residents be provided access to diverse and
18 inclusive material;

19 (5) recognize that library material should be provided for the
20 interest, information, and enlightenment of all people, and should
21 present diverse points of view in the collection as a whole;

22 (6) acknowledge that a librarian is professionally trained to
23 curate and develop collections that provide residents with access to
24 the widest array of library material available to the public library;
25 and

26 (7) establish a procedure for a librarian to review library
27 material within a public library on an ongoing basis, which shall
28 include, but not be limited to: the library material's relevance; the
29 condition of the library material; the availability of duplicates; the
30 availability of more recent material; and the continued demand for
31 the library material.

32 c. The model policy shall be updated as the State Librarian
33 deems necessary.

34

35 10. (New section) a. In addition to the duties prescribed in
36 section 18 of P.L.1969, c.158 (C.18A:73-33), the State Librarian
37 shall establish a model policy establishing a procedure regarding a
38 request for removal of library material within a public library. In
39 developing the model policy, the State Librarian shall consult with
40 the New Jersey Library Association.

41 b. The model policy shall, at a minimum, require:

42 (1) the creation of a request for removal form that may be
43 submitted by an individual with a vested interest to the governing
44 body of the public library in which the library material is
45 challenged to initiate a review of the material. An individual with a
46 vested interest shall include any resident who is served by the
47 public library;

1 (2) the governing body appoint a review committee within 10
2 business days of receiving a request for removal form, consisting
3 of;

- 4 (a) at least one member of the governing body;
- 5 (b) a librarian employed by the public library;
- 6 (c) a staff member, who is not a librarian, of the public library
7 that is familiar with the library material;
- 8 (d) a representative selected by the governing body;
- 9 (e) a resident serviced by the public library, provided the
10 resident selected is not the individual who submitted the form; and
- 11 (f) any additional members the governing body deems
12 necessary;

13 (3) a challenged library material remain within the public library
14 and available for a resident to reserve, check out, or access until
15 there is a final decision by the review committee;

16 (4) the review committee evaluate the request for removal form,
17 review the challenged library material, and report its
18 recommendations to the governing body on whether to remove the
19 library material within 30 business days from the date of receiving
20 the form. A copy of the committee's report shall also be provided
21 to the individual with a vested interest who filed the form; and

22 (5) require the governing body to review the committee's report
23 and make a final determination on whether the library material is to
24 be removed from the public library. The board shall provide a
25 written statement of reasons for:

- 26 (a) the removal or non-removal of a library material; and
- 27 (b) any final determination that is contrary to the
28 recommendations of the review committee.

29

30 11. (New section) a. Notwithstanding any State or federal law to
31 the contrary, a governing body of a public library shall include
32 diverse and inclusive material as part of its library material. The
33 governing body of a public library shall provide a resident access to
34 all library material, including diverse and inclusive material.

35 b. A governing body of a public library shall adopt the policies
36 established by the State Librarian pursuant to sections 9 and 10
37 of P.L. , c. (C. and C.) (pending before the
38 Legislature as this bill).

39

40 12. (New section) a. Any staff member of a public library,
41 including a librarian employed by a public library, shall be immune
42 from criminal and civil liability arising from good faith actions
43 performed pursuant to the provisions of section 11 of P.L. ,
44 c. (C.) (pending before the Legislature as this bill).

45 b. (1) Any staff member of a public library, including a
46 librarian employed by a public library, shall have a civil cause of
47 action for emotional distress, defamation, libel, slander, damage to
48 reputation, or any other relevant tort, against any person who

1 harasses the staff member for complying with the provisions of
2 section 11 of P.L. _____, c. _____ (C. _____) (pending before
3 the Legislature as this bill).

4 (2) If the staff member or librarian employed by a public library
5 is the prevailing party in the civil cause of action, the library staff
6 member shall be entitled to an award of any reasonable attorney's
7 fees and costs of suit incurred, and any injunctive relief as the court
8 may deem necessary to avoid the defendant's continued violation.

9
10 13. N.J.S.2C:34-3 is amended to read as follows:

11 2C:34-3. Obscenity For Persons Under 18.

12 a. Definitions for purposes of this section:

13 (1) "Obscene material" means any description, narrative
14 account, display, depiction of a specified anatomical area or
15 specified sexual activity contained in, or consisting of, a picture or
16 other representation, publication, sound recording, live performance
17 or film, which by means of posing, composition, format or animated
18 sensual details, emits sensuality with sufficient impact to
19 concentrate prurient interest on the area or activity.

20 (2) "Obscene film" means any motion picture film or preview or
21 trailer to a film, not including newsreels portraying actual current
22 events or pictorial news of the day, in which a scene, taken by
23 itself:

24 (a) Depicts a specified anatomical area or specified sexual
25 activity, or the simulation of a specified sexual activity, or
26 verbalization concerning a specified sexual activity; and

27 (b) Emits sensuality sufficient, in terms of the duration and
28 impact of the depiction, to appeal to prurient interest.

29 (3) "Specified anatomical area" means:

30 (a) Less than completely and opaquely covered human genitals,
31 pubic region, buttock or female breasts below a point immediately
32 above the top of the areola; or

33 (b) Human male genitals in a discernibly turgid state, even if
34 covered.

35 (4) "Specified sexual activity" means:

36 (a) Human genitals in a state of sexual stimulation or arousal; or

37 (b) Any act of human masturbation, sexual intercourse or
38 deviate sexual intercourse; or

39 (c) Fondling or other erotic touching of covered or uncovered
40 human genitals, pubic region, buttock or female breast.

41 (5) "Knowingly" means:

42 (a) Having knowledge of the character and content of the
43 material or film described herein; or

44 (b) Having failed to exercise reasonable inspection which would
45 disclose its character and content.

46 (6) "Exhibit" means the sale of admission to view obscene
47 material.

48 (7) "Show" means cause or allow to be seen.

1 b. Promoting obscene material.

2 (1) A person who knowingly sells, distributes, rents or exhibits
3 to a person under 18 years of age obscene material is guilty of a
4 crime of the third degree.

5 (2) A person who knowingly shows obscene material to a person
6 under 18 years of age with the knowledge or purpose to arouse,
7 gratify or stimulate himself or another is guilty of a crime of the
8 third degree if the person showing the obscene material is at least
9 four years older than the person under 18 years of age viewing the
10 material.

11 c. Admitting to exhibition of obscene film.

12 (1) Any person who knowingly admits a person under 18 years
13 of age to a theatre then exhibiting an obscene film is guilty of a
14 crime of the third degree.

15 (2) A person who knowingly shows an obscene film to a person
16 under 18 years of age with the knowledge or purpose to arouse,
17 gratify or stimulate himself or another is guilty of a crime of the
18 third degree if the person showing the obscene film is at least four
19 years older than the person under 18 years of age viewing the film.

20 d. Presumption of knowledge and age.

21 The requisite knowledge with regard to the character and content
22 of the film or material and of the age of the person is presumed in
23 the case of an actor who sells, distributes, rents, exhibits or shows
24 obscene material to a person under 18 years of age or admits to a
25 film obscene for a person under 18 years of age a person who is
26 under 18 years of age.

27 e. Defenses.

28 (1) It is an affirmative defense to a prosecution under
29 subsections b. and c. which the defendant must prove by a
30 preponderance of evidence that:

31 (a) The person under age 18 falsely represented in or by writing
32 that he was age 18 or over;

33 (b) The person's appearance was such that an individual of
34 ordinary prudence would believe him to be age 18 or over; and

35 (c) The sale, distribution, rental, showing or exhibition to or
36 admission of the person was made in good faith relying upon such
37 written representation and appearance and in the reasonable belief
38 that he was actually age 18 or over.

39 (2) It is an affirmative defense to a prosecution under subsection
40 c. that the defendant is an employee in a motion picture theatre who
41 has no financial interest in that motion picture theatre other than his
42 wages and has no decision-making authority or responsibility with
43 respect to the selection of the motion picture show which is
44 exhibited.

45 (3) (a) It is an affirmative defense to a prosecution under
46 subsection b. that the defendant is a teaching staff member,
47 including a school library media specialist, who is engaged in the
48 performance of the person's duties and complying with the

1 provisions of sections 1 through 7 of P.L. _____, c.
2 (C. _____) (pending before the Legislature as this bill). As used
3 in this paragraph, “teaching staff member” has the meaning set forth
4 in N.J.S.18A:1-1.

5 (b) It is an affirmative defense to a prosecution under subsection
6 b. that the defendant is a staff member of a public library, including
7 a librarian employed by a public library who is engaged in the
8 performance of the person’s duties and complying with the
9 provisions of sections 8 through 12 of P.L. _____,
10 c. _____ (C. _____) (pending before the Legislature as this bill).
11 As used in this paragraph, “public library” means a library that
12 serves, free of charge, all residents of an area as established
13 pursuant to chapter 33 or chapter 54 of Title 40 of the New Jersey
14 Statutes, and receives financial support, in whole or in part, from
15 public funds; or a library established pursuant to N.J.S.15A:1-1 et
16 seq. and receiving public funds pursuant to R.S.40:54-35.
17 (cf: P.L.1999, c.227, s.1)

18

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

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

23 a. For an employer, because of the race, creed, color, national
24 origin, ancestry, age, marital status, civil union status, domestic
25 partnership status, affectional or sexual orientation, genetic
26 information, pregnancy or breastfeeding, sex, gender identity or
27 expression, disability or atypical hereditary cellular or blood trait of
28 any individual, or because of the liability for service in the Armed
29 Forces of the United States or the nationality of any individual, or
30 because of the refusal to submit to a genetic test or make available
31 the results of a genetic test to an employer, or because of the refusal
32 of a school library media specialist or teaching staff member to
33 remove library material from a school library except to the extent
34 permitted pursuant to sections 4 and 5 of P.L. _____, c. _____ (C. _____ and
35 C. _____) (pending before the Legislature as this bill), or because
36 of the refusal of any staff member of a public library, including a
37 librarian, to remove library material from a public library except to
38 the extent permitted pursuant to sections 9 and 10 of P.L. _____, c.
39 (C. _____ and C. _____) (pending before the Legislature as this bill), to
40 refuse to hire or employ or to bar or to discharge or require to retire,
41 unless justified by lawful considerations other than age, from
42 employment such individual or to discriminate against such
43 individual in compensation or in terms, conditions or privileges of
44 employment; provided, however, it shall not be an unlawful
45 employment practice to refuse to accept for employment an
46 applicant who has received a notice of induction or orders to report
47 for active duty in the armed forces; provided further that nothing
48 herein contained shall be construed to bar an employer from

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

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

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

34 For the purposes of this subsection, an unlawful employment
35 practice occurs, with respect to discrimination in compensation or
36 in the financial terms or conditions of employment, each occasion
37 that an individual is affected by application of a discriminatory
38 compensation decision or other practice, including, but not limited
39 to, each occasion that wages, benefits, or other compensation are
40 paid, resulting in whole or in part from the decision or other
41 practice.

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

1 conditions of employment has been continuous, if the violation
2 continues to occur within the statute of limitations.

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

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

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

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

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 is unwelcome,
27 objectionable or not acceptable, desired or solicited, and the
28 production of any such written or printed communication, notice or
29 advertisement, purporting to relate to any such place and to be made
30 by any owner, lessee, proprietor, superintendent or manager thereof,
31 shall be presumptive evidence in any action that the same was
32 authorized by such person; provided, however, that nothing
33 contained herein shall be construed to bar any place of public
34 accommodation which is in its nature reasonably restricted
35 exclusively to individuals of one sex, and which shall include but
36 not be limited to any summer camp, day camp, or resort camp,
37 bathhouse, dressing room, swimming pool, gymnasium, comfort
38 station, dispensary, clinic or hospital, or school or educational
39 institution which is restricted exclusively to individuals of one sex,
40 provided individuals shall be admitted based on their gender
41 identity or expression, from refusing, withholding from or denying
42 to any individual of the opposite sex any of the accommodations,
43 advantages, facilities or privileges thereof on the basis of sex;
44 provided further, that the foregoing limitation shall not apply to any
45 restaurant as defined in R.S.33:1-1 or place where alcoholic
46 beverages are served.

47 (2) Notwithstanding the definition of "a place of public
48 accommodation" as set forth in subsection 1. of section 5 of

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

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

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

26 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
27 to deny to or withhold from any person or group of persons any real
28 property or part or portion thereof because of race, creed, color,
29 national origin, ancestry, marital status, civil union status, domestic
30 partnership status, pregnancy or breastfeeding, sex, gender identity
31 or expression, affectional or sexual orientation, familial status,
32 disability, liability for service in the Armed Forces of the United
33 States, nationality, or source of lawful income used for rental or
34 mortgage payments;

35 (2) To discriminate against any person or group of persons
36 because of race, creed, color, national origin, ancestry, marital
37 status, civil union status, domestic partnership status, pregnancy or
38 breastfeeding, sex, gender identity or expression, affectional or
39 sexual orientation, familial status, disability, liability for service in
40 the Armed Forces of the United States, nationality or source of
41 lawful income used for rental or mortgage payments in the terms,
42 conditions or privileges of the sale, rental or lease of any real
43 property or part or portion thereof or in the furnishing of facilities
44 or services in connection therewith;

45 (3) To print, publish, circulate, issue, display, post or mail, or
46 cause to be printed, published, circulated, issued, displayed, posted
47 or mailed any statement, advertisement, publication or sign, or to
48 use any form of application for the purchase, rental, lease,

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

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

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

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

39 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
40 sale, rental, lease, assignment, or sublease any real property or part
41 or portion thereof to any person or group of persons or to refuse to
42 negotiate for the sale, rental, lease, assignment, or sublease of any
43 real property or part or portion thereof to any person or group of
44 persons because of race, creed, color, national origin, ancestry,
45 marital status, civil union status, domestic partnership status,
46 familial status, pregnancy or breastfeeding, sex, gender identity or
47 expression, affectional or sexual orientation, liability for service in
48 the Armed Forces of the United States, disability, nationality, or

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

12 (2) To discriminate against any person because of race, creed,
13 color, national origin, ancestry, marital status, civil union status,
14 domestic partnership status, familial 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, nationality, or source of lawful income
18 used for rental or mortgage payments in the terms, conditions or
19 privileges of the sale, rental, lease, assignment or sublease of any
20 real property or part or portion thereof or in the furnishing of
21 facilities or services in connection therewith;

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

1 individuals shall be qualified based on their gender identity or
2 expression;

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

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

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

23 (1) To discriminate against any person or group of persons
24 because of race, creed, color, national origin, ancestry, marital
25 status, civil union status, domestic partnership status, pregnancy or
26 breastfeeding, sex, gender identity or expression, affectional or
27 sexual orientation, disability, liability for service in the Armed
28 Forces of the United States, familial status or nationality, in the
29 granting, withholding, extending, modifying, renewing, or
30 purchasing, or in the fixing of the rates, terms, conditions or
31 provisions of any such loan, extension of credit or financial
32 assistance or purchase thereof or in the extension of services in
33 connection therewith;

34 (2) To use any form of application for such loan, extension of
35 credit or financial assistance or to make record or inquiry in
36 connection with applications for any such loan, extension of credit
37 or financial assistance which expresses, directly or indirectly, any
38 limitation, specification or discrimination as to race, creed, color,
39 national origin, ancestry, marital status, civil union status, domestic
40 partnership status, pregnancy or breastfeeding, sex, gender identity
41 or expression, affectional or sexual orientation, disability, liability
42 for service in the Armed Forces of the United States, familial status
43 or nationality or any intent to make any such limitation,
44 specification or discrimination; unless otherwise required by law or
45 regulation to retain or use such information;

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

47 (4) To discriminate against any person or group of persons
48 because of the source of any lawful income received by the person

1 or the source of any lawful rent payment to be paid for the real
2 property; or

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

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

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

33 l. For any person to refuse to buy from, sell to, lease from or
34 to, license, contract with, or trade with, provide goods, services or
35 information to, or otherwise do business with any other person on
36 the basis of the race, creed, color, national origin, ancestry, age,
37 pregnancy or breastfeeding, sex, gender identity or expression,
38 affectional or sexual orientation, marital status, civil union status,
39 domestic partnership status, liability for service in the Armed
40 Forces of the United States, disability, nationality, or source of
41 lawful income used for rental or mortgage payments of such other
42 person or of such other person's family members, partners,
43 members, stockholders, directors, officers, managers,
44 superintendents, agents, employees, business associates, suppliers,
45 or customers. This subsection shall not prohibit refusals or other
46 actions (1) pertaining to employee-employer collective bargaining,
47 labor disputes, or unfair labor practices, or (2) made or taken in

1 connection with a protest of unlawful discrimination or unlawful
2 employment practices.

3 m. For any person to:

4 (1) Grant or accept any letter of credit or other document which
5 evidences the transfer of funds or credit, or enter into any contract
6 for the exchange of goods or services, where the letter of credit,
7 contract, or other document contains any provisions requiring any
8 person to discriminate against or to certify that he, she or it has not
9 dealt with any other person on the basis of the race, creed, color,
10 national origin, ancestry, age, pregnancy or breastfeeding, sex,
11 gender identity or expression, affectional or sexual orientation,
12 marital status, civil union status, domestic partnership status,
13 disability, liability for service in the Armed Forces of the United
14 States, or nationality of such other person or of such other person's
15 family members, partners, members, stockholders, directors,
16 officers, managers, superintendents, agents, employees, business
17 associates, suppliers, or customers.

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

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

31 n. For any person to aid, abet, incite, compel, coerce, or induce
32 the doing of any act forbidden by subsections l. and m. of section
33 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
34 do so. Such prohibited conduct shall include, but not be limited to:

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

40 (2) Boycotting, commercially blacklisting or refusing to buy
41 from, sell to, lease from or to, license, contract with, provide goods,
42 services or information to, or otherwise do business with any person
43 because that person has not done or refuses to do any such act or
44 any act prohibited by this subsection; provided that this subsection
45 shall not prohibit refusals or other actions either pertaining to
46 employee-employer collective bargaining, labor disputes, or unfair
47 labor practices, or made or taken in connection with a protest of
48 unlawful discrimination or unlawful employment practices.

1 o. For any multiple listing service, real estate brokers'
2 organization or other service, organization or facility related to the
3 business of selling or renting dwellings to deny any person access
4 to or membership or participation in such organization, or to
5 discriminate against such person in the terms or conditions of such
6 access, membership, or participation, on account of race, creed,
7 color, national origin, ancestry, age, marital status, civil union
8 status, domestic partnership status, familial status, pregnancy or
9 breastfeeding, sex, gender identity or expression, affectional or
10 sexual orientation, disability, liability for service in the Armed
11 Forces of the United States or nationality.

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

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

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

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

41 (2) For an employer to refuse to permit an employee to utilize
42 leave, as provided for in this subsection q., which is solely used to
43 accommodate the employee's sincerely held religious observance or
44 practice. Except where it would cause an employer to incur an
45 undue hardship, no person shall be required to remain at his place
46 of employment during any day or days or portion thereof that, as a
47 requirement of his religion, he observes as his Sabbath or other holy
48 day, including a reasonable time prior and subsequent thereto for

1 travel between his place of employment and his home; provided that
2 any such absence from work shall, wherever practicable in the
3 reasonable judgment of the employer, be made up by an equivalent
4 amount of time and work at some other mutually convenient time,
5 or shall be charged against any leave with pay ordinarily granted,
6 other than sick leave, and any such absence not so made up or
7 charged, may be treated by the employer of that person as leave
8 taken without pay.

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

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

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

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

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

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

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

36 (ii) This subsection q. shall not apply where the uniform
37 application of terms and conditions of attendance to employees is
38 essential to prevent undue hardship to the employer. The burden of
39 proof regarding the applicability of this subparagraph (d) shall be
40 upon the employer.

41 r. For any employer to take reprisals against any employee for
42 requesting from, discussing with, or disclosing to, any other
43 employee or former employee of the employer, a lawyer from
44 whom the employee seeks legal advice, or any government agency
45 information regarding the job title, occupational category, and rate
46 of compensation, including benefits, of the employee or any other
47 employee or former employee of the employer, or the gender, race,
48 ethnicity, military status, or national origin of the employee or any

1 other employee or former employee of the employer, regardless of
2 whether the request was responded to, or to require, as a condition
3 of employment, any employee or prospective employee to sign a
4 waiver, or to otherwise require an employee or prospective
5 employee to agree, not to make those requests or disclosures.
6 Nothing in this subsection shall be construed to require an
7 employee to disclose such information about the employee herself
8 to any other employee or former employee of the employer or to
9 any authorized representative of the other employee or former
10 employee.

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

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

45 For the purposes of this subsection, in determining whether an
46 accommodation would impose undue hardship on the operation of
47 an employer's business, the factors to be considered include: the
48 overall size of the employer's business with respect to the number

1 of employees, number and type of facilities, and size of budget; the
2 type of the employer's operations, including the composition and
3 structure of the employer's workforce; the nature and cost of the
4 accommodation needed, taking into consideration the availability of
5 tax credits, tax deductions, and outside funding; and the extent to
6 which the accommodation would involve waiver of an essential
7 requirement of a job as opposed to a tangential or non-business
8 necessity requirement.

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

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

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

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

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

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

36 Comparisons of wage rates shall be based on wage rates in all of
37 an employer's operations or facilities. For the purposes of this
38 subsection, "member of a protected class" means an employee who
39 has one or more characteristics, including race, creed, color,
40 national origin, nationality, ancestry, age, marital status, civil union
41 status, domestic partnership status, affectional or sexual orientation,
42 genetic information, pregnancy, sex, gender identity or expression,
43 disability or atypical hereditary cellular or blood trait of any
44 individual, **[or]** liability for service in the armed forces, or the
45 refusal of a school library media specialist, teaching staff member,
46 librarian, or any staff member of a public library to remove library
47 material from a school library or a public library, for which
48 subsection a. of this section prohibits an employer from refusing to

1 hire or employ or barring or discharging or requiring to retire from
2 employment or discriminating against the individual in
3 compensation or in terms, conditions or privileges of employment.
4 (cf: P.L.2021, c.248, s.2)

5
6 15. This act shall take effect one year following the date of
7 enactment, but the Commissioner of Education and State Librarian
8 may take such anticipatory action as may be necessary for the
9 implementation of the act.

10
11
12 STATEMENT

13
14 This bill, entitled the "Freedom to Read Act," establishes
15 requirements for library material in public school libraries and
16 public libraries and establishes protections for school library media
17 specialists and librarians against harassment.

18 Under the bill, boards of education and governing boards of
19 public libraries are required to adopt policies on the curation of
20 library material within school libraries and public libraries.
21 "Library material" is defined under the bill to mean any material
22 including, but not limited to, nonfiction and fiction books;
23 magazines; reference books; supplementary titles; multimedia and
24 digital material; software and instructional material and other
25 material not required as part of classroom instruction, belonging to,
26 on loan to, or otherwise in the custody of a school library or public
27 library.

28 To assist boards of education in establishing a policy on the
29 library material within school libraries, the Commissioner of
30 Education is to create a model policy in consultation with the State
31 Librarian and the New Jersey Association of School Librarians.
32 The bill also requires the State Librarian to establish a model
33 policy, in consultation with the New Jersey Library Association, for
34 use and adoption by public libraries.

35 The bill further requires boards of education and governing
36 boards of public libraries to adopt policies creating a procedure
37 regarding requests for removal of library material from a school
38 library or public library. These policies are to establish a
39 mechanism to challenge a library material, create a review
40 committee, and require a written statement of reasons on the final
41 determination of the library material. The State Librarian is to
42 establish a model policy, in consultation with the New Jersey
43 Library Association, for use and adoption by public libraries.

44 The bill also requires boards of education and governing boards
45 of public libraries to include diverse and inclusive material within
46 their respective libraries. Students are to be able to reserve, check
47 out, or access any age- and grade-appropriate library material,
48 including diverse and inclusive materials. Similarly, residents are

1 to be able to reserve, check out, or access any library material,
2 including diverse and inclusive materials.

3 The bill defines “diverse and inclusive material” to mean any
4 material that reflects any protected class as enumerated in the "Law
5 Against Discrimination," (LAD); material produced by an author
6 notwithstanding the author’s membership in a protected class as
7 enumerated in the LAD; and material that contains the author's
8 points of view concerning contemporary problems and issues,
9 whether international, national or local; but excludes content that is
10 inappropriate for grades and age groups served by the school
11 library. The LAD bars discrimination on the basis of a person’s
12 race, creed, color, national origin, ancestry, age, sex, gender
13 identity or expression, affectional or sexual orientation, marital
14 status, liability for service in the Armed Forces, disability, or
15 nationality.

16 Further, this bill provides that a school library media specialist,
17 teaching staff member, librarian, or any other staff member of a
18 public library that engages in activities required under the bill is to
19 be immune from criminal and civil liability. These individuals are
20 also to have a civil cause of action for any relevant tort against any
21 person who harasses the school library media specialist, teaching
22 staff member, librarian, or any other staff member of a public
23 library for complying with the provisions of the bill. “Harassment”
24 or “harasses” is defined in the bill as a singular act that is severe or
25 pervasive, or a series of acts over any period of time directed at a
26 specific person that serves no legitimate purpose and would cause,
27 or has caused, a reasonable person to suffer emotional distress.
28 “Emotional distress” is defined as significant mental suffering or
29 distress.

30 Additionally, the bill creates an affirmative defense for a
31 prosecution for obscenity for school library media specialists,
32 teaching staff members, librarians, or any staff member of a public
33 library that are complying with the provisions of this bill.

34 Finally, this bill expands the scope of the LAD, to incorporate
35 protection against discriminatory acts against a school library media
36 specialist, teaching staff member, librarian, or any staff member of
37 a public library based upon their refusal to remove library material
38 except as permitted under the bill.

39 It is the sponsor’s intent that the Legislature protect the freedom
40 of New Jersey’s residents to read, for school libraries and public
41 libraries to acquire and maintain materials without external
42 limitations, to recognize that school library media specialists and
43 librarians are trained to curate and develop collections, and to
44 protect school library media specialists and librarians from
45 unnecessary and unwarranted harassment and defamation for
46 performance of their duties.