

SENATE, No. 2421

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JANUARY 29, 2024

Sponsored by:

Senator ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Senator M. TERESA RUIZ

District 29 (Essex and Hudson)

Co-Sponsored by:

Senators McKnight and McKeon

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: 3/7/2024)

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 of
17 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 of
37 P.L. , c. (C. and C.) (pending before
38 the 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
2 P.L. , c. (C.) (pending before the Legislature
3 as this bill). As used in this paragraph, “teaching staff member” has
4 the meaning set forth 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
10 P.L. , c. (C.) (pending before the Legislature
11 as this bill). As used in this paragraph, “public library” means a
12 library that serves, free of charge, all residents of an area as
13 established pursuant to chapter 33 or chapter 54 of Title 40 of the
14 New Jersey Statutes, and receives financial support, in whole or in
15 part, from public funds; or a library established pursuant to
16 N.J.S.15A:1-1 et seq. and receiving public funds pursuant to
17 R.S.40:54-35.

18 (cf: P.L.1999, c.227, s.1)

19

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

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

24 a. For an employer, because of the race, creed, color, national
25 origin, ancestry, age, marital status, civil union status, domestic
26 partnership status, affectional or sexual orientation, genetic
27 information, pregnancy or breastfeeding, sex, gender identity or
28 expression, disability or atypical hereditary cellular or blood trait of
29 any individual, or because of the liability for service in the Armed
30 Forces of the United States or the nationality of any individual, or
31 because of the refusal to submit to a genetic test or make available
32 the results of a genetic test to an employer, or because of the refusal
33 of a school library media specialist or teaching staff member to
34 remove library material from a school library except to the extent
35 permitted pursuant to sections 4 and 5 of
36 P.L. , c. (C. and C.) (pending before the Legislature
37 as this bill), or because of the refusal of any staff member of a
38 public library, including a librarian, to remove library material from
39 a public library except to the extent permitted pursuant to sections 9
40 and 10 of P.L. , c. (C. and C.) (pending before the
41 Legislature as this bill), to refuse to hire or employ or to bar or to
42 discharge or require to retire, unless justified by lawful
43 considerations other than age, from employment such individual or
44 to discriminate against such individual in compensation or in terms,
45 conditions or privileges of employment; provided, however, it shall
46 not be an unlawful employment practice to refuse to accept for
47 employment an applicant who has received a notice of induction or
48 orders to report for active duty in the armed forces; provided further

1 that nothing herein contained shall be construed to bar an employer
2 from refusing to accept for employment any person on the basis of
3 sex in those certain circumstances where sex is a bona fide
4 occupational qualification, reasonably necessary to the normal
5 operation of the particular business or enterprise; provided further
6 that it shall not be an unlawful employment practice for a club
7 exclusively social or fraternal to use club membership as a uniform
8 qualification for employment, or for a religious association or
9 organization to utilize religious affiliation as a uniform qualification
10 in the employment of clergy, religious teachers or other employees
11 engaged in the religious activities of the association or organization,
12 or in following the tenets of its religion in establishing and utilizing
13 criteria for employment of an employee; provided further, that it
14 shall not be an unlawful employment practice to require the
15 retirement of any employee who, for the two-year period
16 immediately before retirement, is employed in a bona fide executive
17 or a high policy-making position, if that employee is entitled to an
18 immediate non-forfeitable annual retirement benefit from a pension,
19 profit sharing, savings or deferred retirement plan, or any
20 combination of those plans, of the employer of that employee which
21 equals in the aggregate at least \$27,000.00; and provided further
22 that an employer may restrict employment to citizens of the United
23 States where such restriction is required by federal law or is
24 otherwise necessary to protect the national interest.

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

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

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

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

1 discrimination in compensation or in the financial terms or
2 conditions of employment has been continuous, if the violation
3 continues to occur within the statute of limitations.

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

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

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

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

1 enjoyment of, or on account of that person having aided or
2 encouraged any other person in the exercise or enjoyment of, any
3 right granted or protected by this act.

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

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

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

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

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

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

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

47 (3) To print, publish, circulate, issue, display, post or mail, or
48 cause to be printed, published, circulated, issued, displayed, posted

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

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

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

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

41 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
42 sale, rental, lease, assignment, or sublease any real property or part
43 or portion thereof to any person or group of persons or to refuse to
44 negotiate for the sale, rental, lease, assignment, or sublease of any
45 real property or part or portion thereof to any person or group of
46 persons because of race, creed, color, national origin, ancestry,
47 marital status, civil union status, domestic partnership status,
48 familial status, pregnancy or breastfeeding, sex, gender identity or

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

14 (2) To discriminate against any person because of race, creed,
15 color, national origin, ancestry, marital status, civil union status,
16 domestic partnership status, familial status, pregnancy or
17 breastfeeding, sex, gender identity or expression, affectional or
18 sexual orientation, disability, liability for service in the Armed
19 Forces of the United States, nationality, or source of lawful income
20 used for rental or mortgage payments in the terms, conditions or
21 privileges of the sale, rental, lease, assignment or sublease of any
22 real property or part or portion thereof or in the furnishing of
23 facilities or services in connection therewith;

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

1 to any individual of the opposite sex on the basis of sex, provided
2 individuals shall be qualified based on their gender identity or
3 expression;

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

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

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

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

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

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

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

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

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

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

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

1 labor disputes, or unfair labor practices, or (2) made or taken in
2 connection with a protest of unlawful discrimination or unlawful
3 employment practices.

4 m. For any person to:

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

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

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

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

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

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

1 labor practices, or made or taken in connection with a protest of
2 unlawful discrimination or unlawful employment practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 For the purposes of this subsection, in determining whether an
48 accommodation would impose undue hardship on the operation of

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

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

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

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

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

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

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

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

1 material from a school library or a public library, for which
2 subsection a. of this section prohibits an employer from refusing to
3 hire or employ or barring or discharging or requiring to retire from
4 employment or discriminating against the individual in
5 compensation or in terms, conditions or privileges of employment.

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

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

12
13
14 STATEMENT

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

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

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

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

46 The bill also requires boards of education and governing boards
47 of public libraries to include diverse and inclusive material within
48 their respective libraries. Students are to be able to reserve, check

1 out, or access any age- and grade-appropriate library material,
2 including diverse and inclusive materials. Similarly, residents are
3 to be able to reserve, check out, or access any library material,
4 including diverse and inclusive materials.

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

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

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

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

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