

SENATE, No. 334

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

SYNOPSIS

Makes various changes to the "Law Against Discrimination"; repeals section 4 of P.L.1985, c.73.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

AN ACT concerning the "Law Against Discrimination" and revising various sections of the statutory law.

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

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

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

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

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

(cf: P.L.2006, c.100, s.2)

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

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

a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, familial status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual or independent contractor, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, to refuse to hire or employ or to bar or to discharge or require to retire, unless justified by lawful considerations other than age, from employment such individual or independent contractor or to discriminate against such individual or independent contractor in compensation or in terms, conditions or privileges of employment, or to fail to provide reasonable accommodations for disability unless to do so would impose an undue hardship upon the employer, or to fail to provide reasonable accommodations for pregnancy or pregnancy-related conditions unless to do so would impose an undue hardship upon the employer; provided, however, it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification, reasonably necessary to the normal operation of the particular business or enterprise; [provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years of age;] provided further that it shall not be an unlawful employment practice for a club exclusively social or fraternal to use club membership as a uniform qualification for employment, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee; provided further, that it shall not be an unlawful employment practice to require the retirement of any employee who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if that employee is entitled to an immediate non-forfeitable

annual retirement benefit from a pension, profit sharing, savings or deferred retirement plan, or any combination of those plans, of the employer of that employee which equals in the aggregate at least [\$27,000.00] \$44,000; and provided further that an employer may restrict employment to citizens of the United States where such restriction is required by federal law or is otherwise necessary to protect the national interest.

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

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

For the purposes of this subsection only, the term "independent contractor" means an individual who provides services pursuant to a direct contract between the individual and the entity for whom the individual is performing work.

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

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

d. For any person to take reprisals against any person because that person has opposed any practices or acts forbidden under this act or because that person has filed a complaint, testified or assisted in any proceeding under this act or to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.

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

f. (1) For any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or fail to provide reasonable accommodations for disability unless to do so would impose an undue hardship upon the place of public accommodation, or to discriminate against any person in the furnishing thereof, or directly or indirectly to publish, circulate, issue, display, post or mail any written or printed communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, or privileges of any such place will be refused, withheld from, or denied to any person on account of the race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, gender identity or expression, affectional or sexual orientation, disability or nationality of such person, or that the patronage or custom thereof of any person of any particular race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, gender identity or expression, affectional or sexual orientation, disability or nationality is unwelcome, objectionable or not acceptable, desired or solicited, and the production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained herein shall be construed to bar any place of public accommodation which is in its nature reasonably restricted exclusively to individuals of one sex, and which shall include but not be limited to any summer camp, day camp, or resort camp, bathhouse, dressing room, swimming pool, gymnasium, comfort station, dispensary, clinic or hospital, or school or educational institution which is restricted exclusively to individuals of one sex, provided individuals shall be admitted based on their gender identity or expression, from refusing, withholding from or denying to any individual of the opposite sex any of the accommodations, advantages, facilities or privileges thereof on the basis of sex; provided further, that the foregoing limitation shall not apply to any restaurant as defined in R.S.33:1-1 or place where alcoholic beverages are served.

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

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

g. For any person, including but not limited to, any owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or

sublease any real property or part or portion thereof, or any agent or employee of any of these:

(1) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, nationality, or source of lawful income used for rental or mortgage payments;

(2) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, nationality or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental or lease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith or to refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if such modifications may be necessary to afford the person full enjoyment of the premises; or to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a person with a disability full enjoyment of the premises;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment or sublease of any real property or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property, or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, gender identity, or expression, affectional or sexual orientation, familial status, disability, nationality, or source of lawful income used for rental or mortgage payments, or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied by individuals of one sex to any individual of the exclusively opposite sex on the basis of sex provided individuals shall be qualified based on their gender identity or expression;

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

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

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

(1) To refuse to sell, rent, assign, lease or sublease, or offer for sale, rental, lease, assignment, or sublease any real property or part or portion thereof to any person or group of persons or to refuse to negotiate for the sale, rental, lease, assignment, or sublease of any real property or part or portion thereof to any person or group of persons because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments, or to represent that any real property or portion thereof is not available for inspection, sale, rental, lease, assignment, or sublease when in fact it is so available, or otherwise to deny or withhold any real property or any part or portion of facilities thereof to or from any person or group of persons because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability or nationality;

(2) To discriminate against any person because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental, lease, assignment or sublease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith to refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if such modifications may be necessary to afford the person full enjoyment of the premises; or to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a person with a disability full enjoyment of the premises;

(3) To print, publish, circulate, issue, display, post, or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection h., shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied exclusively by individuals of one sex to any individual of the opposite sex on the basis of sex, provided individuals shall be qualified based on their gender identity or expression;

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

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

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

(1) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, gender identity or expression, affectional or sexual orientation, disability, familial status or nationality, in the granting, withholding, extending, modifying, renewing, or purchasing, or in the fixing of the rates, terms, conditions or provisions of any such loan, extension of credit or financial assistance or purchase thereof or in the extension of services in connection therewith;

(2) To use any form of application for such loan, extension of credit or financial assistance or to make record or inquiry in connection with applications for any such loan, extension of credit or financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, gender identity or expression, affectional or sexual orientation, disability, familial status or nationality or any intent to make any such limitation, specification or discrimination; unless otherwise required by law or regulation to retain or use such information;

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

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

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

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

k. For any real estate broker, real estate salesperson or employee or agent thereof or any other individual, corporation, partnership, or organization, for the purpose of inducing a transaction for the sale or rental of real property from which transaction such person or any of its members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed,

color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including, but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities.

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

m. For any person to:

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

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

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

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

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

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

o. For any multiple listing service, real estate brokers' organization or other service, organization or facility related to the business of selling or renting dwellings to deny any person access to or membership or participation in such organization, or to discriminate against such person in the terms or conditions of such access, membership, or participation, on account of race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability or nationality.

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

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

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

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

(2) For an employer to refuse to permit an employee to utilize leave, as provided for in this subsection q., which is solely used to accommodate the employee's sincerely held religious observance or practice. Except where it would cause an employer to incur an undue hardship, no person shall be required to remain at his place of employment during any day or days or portion thereof that, as a requirement of his religion, he observes as his Sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his place of employment and his home; provided that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay

ordinarily granted, other than sick leave, and any such absence not so made up or charged, may be treated by the employer of that person as leave taken without pay.

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

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

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

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

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

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

(d) (1) The provisions of this subsection q. shall be applicable only to reasonable accommodations of religious observances and shall not supersede any definition of undue hardship or standards for reasonable accommodation of the disabilities of employees.

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

(cf: P.L.2007, c.325, s.2)

3. Section 12 of P.L.1945, c.169 (C.10:5-13) is amended to read as follows:

12. a. Any person claiming to be aggrieved by an unlawful employment practice or an unlawful discrimination may, personally or by an attorney-at-law, make, sign and file with the division a [verified] complaint in writing which shall state the name and address of the person, employer, labor organization, employment agency, owner, lessee, proprietor, manager, superintendent, or agent alleged to have committed the unlawful employment practice or unlawful discrimination complained of and which shall set forth the particulars thereof and shall contain such other information as may be required by the division. Upon receipt of the complaint, the division shall notify the complainant on a form promulgated by the director of the division and approved by the Attorney General of the complainant's rights under this act, including the right to file a complaint in the Superior Court to be heard before a jury; of the jurisdictional limitations of the division; and any other provisions of this act, without interpretation, that may apply to the complaint. The Commissioner of Labor, the Attorney General, or the Commissioner of Education may, in like manner, make, sign and file such complaint. Any employer whose employees, or some of them, refuse or threaten to

refuse to co-operate with the provisions of this act, may file with the division a [verified] complaint asking for assistance by conciliation or other remedial action.

Any complainant may initiate suit in Superior Court under this act without first filing a complaint with the division or any municipal office. Upon the application of any party, a jury trial shall be directed to try the validity of any claim under this act specified in the suit. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any provided by this act or any other statute. Prosecution of such suit in Superior Court under this act shall bar the filing of a complaint with the division or any municipal office during the pendency of any such suit.

b. If a complaint in Superior Court is filed, the complainant shall withdraw any complaint that he has filed with the Division of Civil Rights.

c. At any time after 180 days from the filing of a complaint with the division, a complainant may file a request with the division to present the action personally or through counsel to the Office of Administrative Law. Upon such request, the director of the division shall file the action with the Office of Administrative Law, provided that no action may be filed with the Office of Administrative Law where the director of the division has found that no probable cause exists to credit the allegations of the complaint or has otherwise dismissed the complaint.

d. A party to an action based upon a violation of this act shall mail a copy of the initial pleadings or claims, amended pleadings or claims, counterclaims, briefs, and legal memoranda to the division at the same time as filing such documents with the Office of Administrative Law or the court. Upon application to the Office of Administrative Law or to the court wherein the matter is pending, the division shall be permitted to intervene.

e. The Attorney General or director may initiate suit in Superior Court under this act without first filing a complaint with the division. In addition to the injunctive relief set forth in section 16 of P.L.1945, c.169 (C.10:5-17), the Attorney General may seek and obtain in such Superior Court action, penalties payable to the State in the amounts set forth in section 2 of P.L.1983, c.412 (C.10:5-14.1a), where the Superior Court finds unlawful discrimination. In the alternative, in lieu of penalties, the Attorney General may seek and obtain punitive damages payable to the State, where unlawful discrimination has been found and the provisions and standards of the "Punitive Damages Act," P.L.1995, c.142 (C.2A:15-5.9 et seq.) are satisfied. (cf: P.L.1990, c.12, s.2)

4. Section 15 of P.L.1945, c.169 (C.10:5-16) is amended to read as follows:

15. a. When the director has issued a finding of probable cause, the case in support of the complaint shall be presented before the director by the attorney for the division and evidence concerning attempted conciliation shall not be received. The respondent shall file a written [verified] answer to the complaint and appear at such hearing in person or by representative, with or without counsel, and submit testimony. The complainant shall be allowed to intervene and present testimony in person and may be represented by counsel. The director or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The director shall not be bound by the strict rules of evidence prevailing in civil actions in courts of competent jurisdiction of this State. The testimony taken at the hearing shall be under oath and a verbatim record shall be made.

b. When the director has issued a finding of probable cause in a housing discrimination complaint only, any party to that complaint may elect, in lieu of the administrative proceeding set forth in this section, to have the claim asserted in the finding of probable cause adjudicated in a civil action in Superior Court pursuant to section 12 of P.L.1945, c.169 (C.10:5-13). Such an election shall be made not later than 20 days after receipt of the finding of probable cause. Upon such election, the attorney for the division shall promptly file such an action in Superior Court. Upon application to the court wherein the matter is pending, the complainant shall be permitted to intervene and present testimony in person and may be represented by counsel.

(cf: P.L.2003, c.180, s.15)

5. (New section) Attorney General, privileged communication.

Where the Attorney General brings an action, either administratively pursuant to section 17 of P.L.1945, c.169 (C.10:5-16) or in Superior Court pursuant to section 12 of P.L.1945, c.169 (C.10:5-13), which seeks relief for an individual who claims to be a victim of unlawful discrimination, communications between members of the Attorney General's office and such individual are privileged as would be a communication between an attorney and a client.

6. (New section) It shall be an unlawful employment practice for an employer, as a condition of employment or a condition of continued employment, to require an employee to waive his right to a trial by jury, or to change a statute of limitation which would otherwise be applicable or for an employee to waive any rights under this act as a condition of employment or continued employment.

7. (New section) a. It is an unlawful employment practice for an employer to adopt or enforce a policy that limits or prohibits the use of any language in any workplace, unless both of the following conditions exist:

(1) the language restriction is justified by a business necessity; and

(2) the employer has notified its employees of the circumstances and the time when the language restriction is required to be observed and of the consequences for violating the language restriction.

b. For the purposes of this section, "business necessity" means an overriding legitimate business purpose such that the language restriction is necessary to the safe and efficient operation of the business, that the language restriction effectively fulfills the business purpose it is supposed to serve, and there is no alternative practice to the language restriction that would accomplish the business purpose equally well with a lesser discriminatory impact.

8. Section 4 of P.L.1985, c.73 (C.10:5-2.2) is repealed.

9. (New section) The Attorney General, acting in consultation with the Director of the Division of Civil Rights and in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate guidelines to assist employers in adopting written employment policies prohibiting discrimination on the basis of pregnancy pursuant to the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

10. This act shall take effect immediately.

STATEMENT

This bill would make various changes to the "Law Against Discrimination," set out in N.J.S.A.10:5-1 et seq.

Section 1 of the bill amends the second paragraph of N.J.S.A.10:5-3, which sets out legislative findings and declarations, to add a declaration concerning the Legislature's opposition to discrimination on the grounds of "familial status."

Section 2 makes several changes to N.J.S.A.10:5-12. This section of the bill provides that it would constitute an unlawful employment practice for an employer to refuse to hire or to discharge an employee on the basis of familial status; for a labor organization to exclude or expel an individual from membership on the basis of familial status, and for an employer or employment agency to print or circulate a statement, advertisement or publication which expresses discrimination on the grounds of familial status.

Section 2 of the bill includes references to "independent contractor" within subsection a. of N.J.S.A.10:5-12 concerning unlawful employment practice or unlawful discrimination to provide that for the purposes of subsection a. only, the term "independent contractor" means an individual who provides services pursuant to a direct contract between the individual and the entity for whom the individual is performing work.

N.J.S.A.10:5-12 would also be amended to provide that it would be an unlawful employment practice to fail to provide reasonable accommodations for disability unless to do so would impose an undue hardship upon the employer, or to fail to provide reasonable accommodations for pregnancy or pregnancy-related conditions unless to do so would impose an undue hardship upon the employer. The bill also amends N.J.S.A.10:5-12 to provide that it would be unlawful employment practice to refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if such modifications may be necessary to afford the person full enjoyment of the premises; or to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a person with a disability full enjoyment of the premise.

Section 2 of the bill also removes obsolete language from subsection a. of N.J.S.A.10:5-12 that currently allows an employer to refuse to hire or promote a person over age 70. Such refusal would violate federal law; in 1986, Congress amended the federal "Age Discrimination in Employment Act," 29 U.S.C.A.623 et seq., to eliminate the statute's upper age cap of 70.

In addition, section 2 of the bill increases the monetary amount of \$27,000 currently set out in subsection a. of N.J.S.A.10:5-12 to \$44,000 in compliance with 1984 amendments to the federal "Age Discrimination in Employment Act." Under the provisions of 29 U.S.C.A.631, an employer may provide for the compulsory retirement of an employee who is at least age 65 and is employed in a bona fide executive or

high policy making position if the employee is entitled to a retirement benefit of at least \$44,000. Subsection a. of N.J.S.A.10:5-12 sets out similar language.

Section 3 of the bill amends N.J.S.A.10:5-13 to remove the requirement that a person claiming to be aggrieved by an unlawful employment practice or an unlawful discrimination file a verified complaint; the complaint need not be verified. Section 3 also provides that if a person who files a complaint with the Superior Court has previously filed a complaint with the Division of Civil Rights, he must withdraw the complaint he has filed with the Division.

In addition, section 3 provides that the Attorney General or the Director of the Division of Civil Rights may initiate suit under the LAD without first filing a complaint with the Division of Civil Rights. The Attorney General would also be authorized to seek and obtain penalties payable to the State where the Superior Court finds unlawful discrimination. The bill provides that, in lieu of penalties, the Attorney General may seek and obtain punitive damages payable to the State, where unlawful discrimination has been found and the provisions and standards of the "Punitive Damages Act," N.J.S.A.2A:15-5.9 et seq., are satisfied.

Section 4 of the bill removes the requirement that the answer filed by the respondent to a complaint must be verified.

Section 5 provides that when the Attorney General brings an action under the LAD which seeks relief for an individual who claims to be a victim of unlawful discrimination, communications between members of the Attorney General's office and such individual would be privileged as would be a communication between an attorney and a client.

Section 6 provides that it would be an unlawful employment practice for an employer, as a condition of employment or a condition of continued employment, to require an employee to waive his right to a trial by jury, or to change a statute of limitation which would otherwise be applicable or for an employee to waive any rights under the LAD as a condition of employment or continued employment.

Section 7 of the bill would prohibit "English-only" rules in the workplace under certain circumstances. The Appellate Division has ruled that it is not a violation of the LAD for an employer to implement a rule that employees speak only English on the job and to fire an employee who speaks another language to a co-worker. (See Rosario v. Cacace, 337 N.J. Super. 578 (App. Div. 2001).) Under the bill, it would be an unlawful employment practice for an employer to adopt or enforce a policy that limits or prohibits the use of any language in any workplace, unless both of the following conditions exist:

- (1) the language restriction is justified by a business necessity; and
- (2) the employer has notified its employees of the circumstances and the time when the language restriction is required to be observed and of the consequences for violating the language restriction.

The bill defines "business necessity" as an overriding legitimate business purpose such that the language restriction is necessary to the safe and efficient operation of the business, that the language restriction effectively fulfills the business purpose it is supposed to serve, and there is no alternative practice to the language restrictions that would accomplish the business purpose equally well with a lesser discriminatory impact.

Section 8 of the bill would repeal N.J.S.A.10:5-2.2, which, like N.J.S.A.10:5-12, contains obsolete language allowing the forced retirement of an employee of an institution of higher education at age 70. The

federal "Age Discrimination in Employment Act" also prohibits the forced retirement of higher education employees.

Section 9 of the bill would provide that the Attorney General, acting in consultation with the Director of the Division of Civil Rights, shall promulgate guidelines to assist employers in adopting written employment policies prohibiting discrimination on the basis of pregnancy pursuant to the "Law Against Discrimination."4-5