

# SENATE, No. 104

## STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator SANDRA B. CUNNINGHAM**

**District 31 (Hudson)**

**Co-Sponsored by:**

**Senators Cruz-Perez, Ruiz, Gill, Greenstein, Pou, Gordon, Turner and Beach**

**SYNOPSIS**

Concerns equal pay for women and employment discrimination.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



S104 WEINBERG, SWEENEY

2

1 AN ACT concerning equal pay for women and employment  
2 discrimination, requiring public contractors to report certain  
3 employment information, amending P.L.1945, c.169, and  
4 supplementing P.L.1952, c.9 (C.34:11-56.1 et seq.).  
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:  
8

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

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

13 a. For an employer, because of the race, creed, color, national  
14 origin, ancestry, age, marital status, civil union status, domestic  
15 partnership status, affectional or sexual orientation, genetic  
16 information, pregnancy, sex, gender identity or expression,  
17 disability or atypical hereditary cellular or blood trait of any  
18 individual, or because of the liability for service in the Armed  
19 Forces of the United States or the nationality of any individual, or  
20 because of the refusal to submit to a genetic test or make available  
21 the results of a genetic test to an employer, to refuse to hire or  
22 employ or to bar or to discharge or require to retire, unless justified  
23 by lawful considerations other than age, from employment such  
24 individual or to discriminate against such individual in  
25 compensation or in terms, conditions or privileges of employment;  
26 provided, however, it shall not be an unlawful employment practice  
27 to refuse to accept for employment an applicant who has received a  
28 notice of induction or orders to report for active duty in the armed  
29 forces; provided further that nothing herein contained shall be  
30 construed to bar an employer from refusing to accept for  
31 employment any person on the basis of sex in those certain  
32 circumstances where sex is a bona fide occupational qualification,  
33 reasonably necessary to the normal operation of the particular  
34 business or enterprise; provided further that nothing herein  
35 contained shall be construed to bar an employer from refusing to  
36 accept for employment or to promote any person over 70 years of  
37 age; provided further that it shall not be an unlawful employment  
38 practice for a club exclusively social or fraternal to use club  
39 membership as a uniform qualification for employment, or for a  
40 religious association or organization to utilize religious affiliation  
41 as a uniform qualification in the employment of clergy, religious  
42 teachers or other employees engaged in the religious activities of  
43 the association or organization, or in following the tenets of its  
44 religion in establishing and utilizing criteria for employment of an  
45 employee; provided further, that it shall not be an unlawful

**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 employment practice to require the retirement of any employee  
2 who, for the two-year period immediately before retirement, is  
3 employed in a bona fide executive or a high policy-making position,  
4 if that employee is entitled to an immediate non-forfeitable annual  
5 retirement benefit from a pension, profit sharing, savings or  
6 deferred retirement plan, or any combination of those plans, of the  
7 employer of that employee which equals in the aggregate at least  
8 \$27,000.00; and provided further that an employer may restrict  
9 employment to citizens of the United States where such restriction  
10 is required by federal law or is otherwise necessary to protect the  
11 national interest.

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

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

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

30 In addition to any other relief authorized by the "Law Against  
31 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for  
32 discrimination in compensation or in the financial terms or  
33 conditions of employment, liability shall accrue and an aggrieved  
34 person may obtain relief for back pay for the entire period of time  
35 in which the violation with regard to discrimination in  
36 compensation or in the financial terms or conditions of employment  
37 has been continuous, if the violation continues to occur within the  
38 statute of limitations.

39 Nothing in this subsection shall prohibit the application of the  
40 doctrine of "continuing violation" or the "discovery rule" to any  
41 appropriate claim as those doctrines currently exist in New Jersey  
42 common law. It shall be an unlawful employment practice to  
43 require employees or prospective employees to consent to a  
44 shortened statute of limitations or to waive any of the protections  
45 provided by this act.

46 b. For a labor organization, because of the race, creed, color,  
47 national origin, ancestry, age, marital status, civil union status,  
48 domestic partnership status, affectional or sexual orientation,

1 gender identity or expression, disability, pregnancy, or sex of any  
2 individual, or because of the liability for service in the Armed  
3 Forces of the United States or nationality of any individual, to  
4 exclude or to expel from its membership such individual or to  
5 discriminate in any way against any of its members, against any  
6 applicant for, or individual included in, any apprentice or other  
7 training program or against any employer or any individual  
8 employed by an employer; provided, however, that nothing herein  
9 contained shall be construed to bar a labor organization from  
10 excluding from its apprentice or other training programs any person  
11 on the basis of sex in those certain circumstances where sex is a  
12 bona fide occupational qualification reasonably necessary to the  
13 normal operation of the particular apprentice or other training  
14 program.

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

28 d. For any person to take reprisals against any person because  
29 that person has opposed any practices or acts forbidden under this  
30 act or because that person has sought legal advice regarding rights  
31 under this act, shared relevant information with legal counsel,  
32 shared information with a governmental entity, or filed a complaint,  
33 testified or assisted in any proceeding under this act, or to coerce,  
34 intimidate, threaten or interfere with any person in the exercise or  
35 enjoyment of, or on account of that person having aided or  
36 encouraged any other person in the exercise or enjoyment of, any  
37 right granted or protected by this act.

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

41 f. (1) For any owner, lessee, proprietor, manager,  
42 superintendent, agent, or employee of any place of public  
43 accommodation directly or indirectly to refuse, withhold from or  
44 deny to any person any of the accommodations, advantages,  
45 facilities or privileges thereof, or to discriminate against any person  
46 in the furnishing thereof, or directly or indirectly to publish,  
47 circulate, issue, display, post or mail any written or printed  
48 communication, notice, or advertisement to the effect that any of

1 the accommodations, advantages, facilities, or privileges of any  
2 such place will be refused, withheld from, or denied to any person  
3 on account of the race, creed, color, national origin, ancestry,  
4 marital status, civil union status, domestic partnership status,  
5 pregnancy, sex, gender identity or expression, affectional or sexual  
6 orientation, disability or nationality of such person, or that the  
7 patronage or custom thereof of any person of any particular race,  
8 creed, color, national origin, ancestry, marital status, civil union  
9 status, domestic partnership status, pregnancy status, sex, gender  
10 identity or expression, affectional or sexual orientation, disability or  
11 nationality is unwelcome, objectionable or not acceptable, desired  
12 or solicited, and the production of any such written or printed  
13 communication, notice or advertisement, purporting to relate to any  
14 such place and to be made by any owner, lessee, proprietor,  
15 superintendent or manager thereof, shall be presumptive evidence in  
16 any action that the same was authorized by such person; provided,  
17 however, that nothing contained herein shall be construed to bar any  
18 place of public accommodation which is in its nature reasonably  
19 restricted exclusively to individuals of one sex, and which shall  
20 include but not be limited to any summer camp, day camp, or resort  
21 camp, bathhouse, dressing room, swimming pool, gymnasium,  
22 comfort station, dispensary, clinic or hospital, or school or  
23 educational institution which is restricted exclusively to individuals  
24 of one sex, provided individuals shall be admitted based on their  
25 gender identity or expression, from refusing, withholding from or  
26 denying to any individual of the opposite sex any of the  
27 accommodations, advantages, facilities or privileges thereof on the  
28 basis of sex; provided further, that the foregoing limitation shall not  
29 apply to any restaurant as defined in R.S.33:1-1 or place where  
30 alcoholic beverages are served.

31 (2) Notwithstanding the definition of "a place of public  
32 accommodation" as set forth in subsection 1. of section 5 of  
33 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,  
34 manager, superintendent, agent, or employee of any private club or  
35 association to directly or indirectly refuse, withhold from or deny to  
36 any individual who has been accepted as a club member and has  
37 contracted for or is otherwise entitled to full club membership any  
38 of the accommodations, advantages, facilities or privileges thereof,  
39 or to discriminate against any member in the furnishing thereof on  
40 account of the race, creed, color, national origin, ancestry, marital  
41 status, civil union status, domestic partnership status, pregnancy,  
42 sex, gender identity, or expression, affectional or sexual orientation,  
43 disability or nationality of such person.

44 In addition to the penalties otherwise provided for a violation of  
45 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)  
46 of subsection f. of this section is the holder of an alcoholic beverage  
47 license issued under the provisions of R.S.33:1-12 for that private  
48 club or association, the matter shall be referred to the Director of

1 the Division of Alcoholic Beverage Control who shall impose an  
2 appropriate penalty in accordance with the procedures set forth in  
3 R.S.33:1-31.

4 g. For any person, including but not limited to, any owner,  
5 lessee, sublessee, assignee or managing agent of, or other person  
6 having the right of ownership or possession of or the right to sell,  
7 rent, lease, assign, or sublease any real property or part or portion  
8 thereof, or any agent or employee of any of these:

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

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

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

1 by individuals of one sex to any individual of the exclusively  
2 opposite sex on the basis of sex provided individuals shall be  
3 qualified based on their gender identity or 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 h. For any person, including but not limited to, any real estate  
17 broker, real estate salesperson, or employee or agent thereof:

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

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

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

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

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

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

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

43 (1) To discriminate against any person or group of persons  
44 because of race, creed, color, national origin, ancestry, marital  
45 status, civil union status, domestic partnership status, pregnancy,  
46 sex, gender identity or expression, affectional or sexual orientation,  
47 disability, familial status or nationality, in the granting,  
48 withholding, extending, modifying, renewing, or purchasing, or in

1 the fixing of the rates, terms, conditions or provisions of any such  
2 loan, extension of credit or financial assistance or purchase thereof  
3 or in the extension of services in connection therewith;

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

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

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

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

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

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

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

17       m. For any person to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 similar in their ability or inability to work. This subsection shall  
2 not be construed as otherwise increasing or decreasing any  
3 employee's rights under law to paid or unpaid leave in connection  
4 with pregnancy.

5 For the purposes of this section "pregnancy" means pregnancy,  
6 childbirth, or medical conditions related to pregnancy or childbirth,  
7 including recovery from childbirth.

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

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

31 (1) That the differential is based on one or more legitimate, bona  
32 fade factors other than sex, such as training, education or  
33 experience, or the quantity or quality of production;

34 (2) That the factor or factors do not perpetuate a sex-based  
35 differential in compensation;

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

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

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

44 Comparisons of wage rates shall be based on wage rates in all of  
45 an employer's operations or facilities.

46 (cf: P.L.2013, c.220, s.2)

1       2. Section 16 of P.L.1945, c.169 (C.10:5-17) is amended to  
2 read as follows:

3       16. If, upon all evidence at the hearing, the director shall find  
4 that the respondent has engaged in any unlawful employment  
5 practice or unlawful discrimination as defined in this act, the  
6 director shall state his findings of fact and conclusions of law and  
7 shall issue and cause to be served on such respondent an order  
8 requiring such respondent to cease and desist from such unlawful  
9 employment practice or unlawful discrimination and to take such  
10 affirmative action, including, but not limited to, hiring,  
11 reinstatement or upgrading of employees, with or without back pay,  
12 or restoration to membership, in any respondent labor organization,  
13 or extending full and equal accommodations, advantages, facilities,  
14 and privileges to all persons, as, in the judgment of the director, will  
15 effectuate the purpose of this act, and including a requirement for  
16 report of the manner of compliance. If the conduct violative of this  
17 act constitutes any form of unlawful economic discrimination  
18 prohibited in **【section 11, subsections】** subsection 1., m., **【and】** or  
19 n. of **【this act,】** section 11 of P.L.1945, c.169 (C.10:5-12), or any  
20 form of unlawful employment practice prohibited by subsection r.  
21 or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the affirmative  
22 action taken by the director may include the award of three-fold  
23 damages to the person or persons aggrieved by the violation. The  
24 director shall have the power to use reasonably certain bases,  
25 including but not limited to list, catalogue or market prices or  
26 values, or contract or advertised terms and conditions, in order to  
27 determine particulars or performance in giving appropriate remedy.  
28 In addition to any other remedies provided by P.L.1945,  
29 c.169 (C.10:5-1 et seq.), a prevailing complainant may recover  
30 damages to compensate for emotional distress caused by the  
31 activities found to be in violation of P.L.1945, c.169 (C.10:5-1 et  
32 seq.) to the same extent as is available in common law tort actions.  
33 In any case in which the director, Attorney General, or appropriate  
34 organization is a complainant, on behalf of named or unnamed  
35 individuals or a class of individuals, any of the remedies or relief  
36 allowed by this act may be awarded or applied to the named or  
37 unnamed individual victims of discrimination. If, upon all  
38 evidence, the director shall find that the respondent has not engaged  
39 in any such unlawful practice or unlawful discrimination, the  
40 director shall state his findings of fact and conclusions of law and  
41 shall issue and cause to be served on the complainant an order  
42 dismissing the said complaint as to such respondent.

43 (cf: P.L.2003, c.180, s.16)

44

45       3. (New section) a. Any employer, regardless of the location  
46 of the employer, who enters into a contract with a public body to  
47 provide qualifying services to the public body shall provide a report  
48 to the Commissioner of Labor and Workforce Development, in a

1 form issued by regulation promulgated by the commissioner, of  
2 information regarding the gender, race, job title, occupational  
3 category, and total compensation of every employee of the  
4 employer employed in the State in connection with the contract.  
5 The employer shall provide the commissioner, throughout the  
6 duration of the contract or contracts, with an update to the report  
7 each time there is a significant change in any of the information that  
8 the employer is required to report pursuant to this section, or other  
9 significant change in employment status, including, but not limited  
10 to, medical leave of 12 weeks or more, hiring, termination for any  
11 reason, a change in part-time or full-time status, or a change in  
12 “employee” or “contractor” status.

13 b. Any employer, regardless of the location of the employer,  
14 who enters into a contract with a public body to perform any public  
15 work for the public body shall provide to the commissioner, through  
16 certified payroll records required pursuant to P.L.1963,  
17 c.150 (C.34:11-56.25 et seq.), information regarding the gender,  
18 race, job title, occupational category, and rate of total compensation  
19 of every employee of the employer employed in the State in  
20 connection with the contract. The employer shall provide the  
21 commissioner, throughout the duration of the contract or contracts,  
22 with an update to the information whenever payroll records are  
23 required to be submitted pursuant to P.L.1963, c.150 (C.34:11-  
24 56.25 et seq.).

25 c. The commissioner shall retain the information provided by  
26 the employer during any period of time that one or more contracts  
27 are in effect between the employer and any public body and not less  
28 than five years after the end of that period. The retained  
29 employment information shall be made available by the  
30 commissioner to the Division on Civil Rights in the Department of  
31 Law and Public Safety, and, upon request, provided to anyone who  
32 is or was an employee of the employer during the period of any of  
33 the contracts between the employer and any public body, or any  
34 authorized representative of the employee.

35 d. For the purposes of the section:

36 “Public body” means the State or any agency or instrumentality  
37 of the State;

38 “Public work” means public work as defined in section 2 of  
39 P.L.1963, c.150 (C.34:11-56.26) and which is subject to the  
40 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). Public work  
41 shall not include the provision of goods or products.

42 “Qualifying services” means the provision of any service to the  
43 State or to any other public body, except for public work as defined  
44 in section 2 of P.L.1963, c.150 (C.34:11-56.26).

45 “Service” means any act performed in exchange for payment,  
46 including the provision of professional services, but shall not  
47 include the sale of goods or products.

1       4. This act shall take effect immediately.

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3

4

STATEMENT

5

6       This bill modifies current law, including the Law Against  
7 Discrimination, P.L.1945, c.169 (C.10:5-1 et seq.) (“LAD”), to  
8 strengthen protections against employment discrimination and  
9 promote equal pay for women.

10       The bill amends the LAD to make it an unlawful employment  
11 practice for an employer to discriminate between employees on the  
12 basis of sex by paying a rate of compensation, including benefits, to  
13 employees of one sex less than the rate paid to employees of the  
14 other sex for substantially similar work, when viewed as a  
15 composite of skill, effort and responsibility. The bill prohibits any  
16 employer paying a rate in violation of the bill from reducing the rate  
17 of compensation of any employee in order to comply with the bill.  
18 The bill permits an employer to pay a different rate of compensation  
19 if the employer demonstrates that the differential is made pursuant  
20 to a seniority system or a merit system, or is based on legitimate,  
21 bona fide factors other than sex, such as training, education,  
22 experience, or the quantity or quality of production, that each factor  
23 is applied reasonably, that one or more of the factors account for the  
24 entire wage differential, and that the factor or factors do not  
25 perpetuate a sex-based differential in compensation, are job-related  
26 and based upon legitimate business necessities.

27       The bill also amends the LAD to prohibit an employer from  
28 taking reprisals against an employee for disclosing information  
29 about job titles, occupational categories, rates of compensation,  
30 gender, race, ethnicity, military status, or national origin of  
31 employees or former employees. It prohibits an employer from  
32 requiring, as a condition of employment, any employee or  
33 prospective employee to waive rights under the law.

34       The bill provides for the awarding of three-fold damages for  
35 violations of its provisions.

36       The bill further provides that a discriminatory compensation  
37 decision or other employment practice that is unlawful under the  
38 LAD occurs each occasion that compensation is paid in furtherance  
39 of that discriminatory decision or practice. This provision thus  
40 restarts the applicable statute of limitations governing  
41 discriminatory compensation claims under the LAD, effectively  
42 making each paycheck another instance of the discriminatory  
43 compensation decision or other practice and therefore a new or  
44 continuing violation. In addition, the bill provides that liability  
45 shall accrue and an aggrieved person may obtain relief for back pay  
46 for the entire period of time in which the violation has been  
47 continuous, if the violation continues to occur within the statute of  
48 limitations.

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1 The bill provides that nothing in the LAD will prohibit  
2 application of the doctrine of “continuing violation” or the  
3 “discovery rule” to any appropriate claim as those doctrines  
4 currently exist in New Jersey common law. The bill also makes it a  
5 violation of the LAD for an employer to require an employee to  
6 agree to any reduction of any applicable statute of limitation.

7 Finally, the bill requires an employer entering into a contract  
8 with the State to provide information concerning every employee  
9 employed in connection with the contract, including information  
10 regarding the employee’s gender, race, job title, occupational  
11 category, and total compensation, and report specified significant  
12 changes in employee status during the contract. The Commissioner  
13 of Labor and Workforce Development is required to retain and  
14 make the information available to the Division of Civil Rights, and,  
15 upon request, employees and their authorized representatives.