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S E N A T E - A S S E M B L Y

February 19, 2009

IN SENATE -- Introduced by Sens. DUANE, ADAMS, BRESLIN, HASSELL-THOMPSON, KRUEGER, PARKER, PERKINS, SAMPSON, SAVINO, SCHNEIDERMAN, SERRANO, SQUADRON, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. GOTTFRIED, GLICK, O'DONNELL, BRENNAN, CANESTRARI, COOK, ESPAILLAT, FIELDS, HOYT, ORTIZ, PERALTA, HEVE-SI, TITONE, CARROZZA, JEFFRIES, KELLNER, SCHIMEL, KAVANAGH, CAHILL, ENGLEBRIGHT, DINOWITZ -- Multi-Sponsored by -- M. of A. ALESSI, AUBRY, BENEDETTO, BING, BOYLAND, CHRISTENSEN, CYMBROWITZ, FARRELL, GIANARIS, GORDON, GUNTHER, HOOPER, JACOBS, JAFFEE, JOHN, KOON, LANCMAN, LAVINE, LIFTON, V. LOPEZ, LUPARDO, MAGNARELLI, MAISEL, MARKEY, McENENY, J. MILLER, MILLMAN, PAULIN, PEOPLES-STOKES, PERRY, PHEFFER, PRETLOW, RAMOS, N. RIVERA, ROBINSON, ROSENTHAL, SAYWARD, SCARBOROUGH, STIRPE, SWEENEY, THIELE, TOWNS, WEISENBERG, WRIGHT, ZEBROWSKI -- read once and referred to the Committee on Governmental Operations -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the executive law, the civil rights law and the education law, in relation to prohibiting discrimination based on gender identity or expression; and to amend the penal law and the criminal procedure law, in relation to including offenses regarding gender identity or expression within the list of offenses subject to treatment as hate crimes

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD00798-02-0

1 Section 1. Legislative findings and intent. The legislature reaffirms
2 that the state has the responsibility to act to assure that every indi-
3 vidual within this state is afforded an equal opportunity to enjoy a
4 full and productive life, and that the failure to provide such equal
5 opportunity, whether because of discrimination, prejudice, intolerance
6 or inadequate education, training, housing or health care not only
7 threatens the rights and proper privileges of its inhabitants, but
8 menaces the institutions and foundation of a free democratic state and
9 threatens the peace, order, health, safety and general welfare of the
10 state and its inhabitants.

11 The legislature further finds that many residents of this state have
12 encountered prejudice on account of their gender identity or expression,
13 and that this prejudice has severely limited or actually prevented
14 access to employment, housing and other basic necessities of life, lead-
15 ing to deprivation and suffering. The legislature further recognizes
16 that this prejudice has fostered a general climate of hostility and
17 distrust, leading in some instances to physical violence against those
18 perceived to live in a gender identity or expression which is different
19 from that traditionally associated with the sex assigned to that person
20 at birth.

21 In so doing, the legislature makes clear its action is not intended to
22 promote any particular attitude, course of conduct or way of life. Rath-
23 er its purpose is to ensure that individuals who live in our free socie-
24 ty have the capacity to make their own choices, follow their own beliefs
25 and conduct their own lives as they see fit, consistent with existing
26 law.

27 The legislature further finds that, as court decisions have properly
28 held, New York's sex discrimination laws prohibit discrimination based
29 on gender stereotypes or because an individual has transitioned or
30 intends to transition from one gender to another. This legislation is
31 intended to codify this principle and to ensure that the public under-
32 stands that discrimination on the basis of gender identity and
33 expression is prohibited.

34 S 2. Subdivisions 1 and 2 of section 291 of the executive law, as
35 amended by chapter 106 of the laws of 2003, are amended to read as
36 follows:

37 1. The opportunity to obtain employment without discrimination because
38 of age, race, creed, color, national origin, sexual orientation, GENDER
39 IDENTITY OR EXPRESSION, military status, sex or marital status is hereby
40 recognized as and declared to be a civil right.

41 2. The opportunity to obtain education, the use of places of public
42 accommodation and the ownership, use and occupancy of housing accommo-
43 dations and commercial space without discrimination because of age,
44 race, creed, color, national origin, sexual orientation, GENDER IDENTITY
45 OR EXPRESSION, military status, sex or marital status, as specified in
46 section two hundred ninety-six of this article, is hereby recognized as
47 and declared to be a civil right.

48 S 3. Section 292 of the executive law is amended by adding a new
49 subdivision 35 to read as follows:

50 35. THE TERM "GENDER IDENTITY OR EXPRESSION" MEANS HAVING OR BEING
51 PERCEIVED AS HAVING A GENDER IDENTITY, SELF-IMAGE, APPEARANCE, BEHAVIOR
52 OR EXPRESSION WHETHER OR NOT THAT GENDER IDENTITY, SELF-IMAGE, APPEAR-
53 ANCE, BEHAVIOR OR EXPRESSION IS DIFFERENT FROM THAT TRADITIONALLY ASSO-
54 CIATED WITH THE SEX ASSIGNED TO THAT PERSON AT BIRTH.

1 S 4. Subdivisions 8 and 9 of section 295 of the executive law, as
2 amended by chapter 106 of the laws of 2003, are amended to read as
3 follows:

4 8. To create such advisory councils, local, regional or state-wide, as
5 in its judgment will aid in effectuating the purposes of this article
6 and of section eleven of article one of the constitution of this state,
7 and the division may empower them to study the problems of discrimi-
8 nation in all or specific fields of human relationships or in specific
9 instances of discrimination because of age, race, creed, color, national
10 origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military
11 status, sex, disability or marital status and make recommendations to
12 the division for the development of policies and procedures in general
13 and in specific instances. The advisory councils also shall disseminate
14 information about the division's activities to organizations and indi-
15 viduals in their localities. Such advisory councils shall be composed of
16 representative citizens, serving without pay, but with reimbursement for
17 actual and necessary traveling expenses; and the division may make
18 provision for technical and clerical assistance to such councils and for
19 the expenses of such assistance.

20 9. To develop human rights plans and policies for the state and assist
21 in their execution and to make investigations and studies appropriate to
22 effectuate this article and to issue such publications and such results
23 of investigations and research as in its judgement will tend to inform
24 persons of the rights assured and remedies provided under this article,
25 to promote good-will and minimize or eliminate discrimination because of
26 age, race, creed, color, national origin, sexual orientation, GENDER
27 IDENTITY OR EXPRESSION, military status, sex, disability or marital
28 status.

29 S 5. Paragraphs (a), (b), (c) and (d) of subdivision 1 of section 296
30 of the executive law, paragraph (a) as amended by chapter 80 of the laws
31 of 2009, paragraphs (b), (c), and (d) as amended by chapter 75 of the
32 laws of 2005, are amended to read as follows:

33 (a) For an employer or licensing agency, because of an individual's
34 age, race, creed, color, national origin, sexual orientation, GENDER
35 IDENTITY OR EXPRESSION, military status, sex, disability, predisposing
36 genetic characteristics, marital status, or domestic violence victim
37 status, to refuse to hire or employ or to bar or to discharge from
38 employment such individual or to discriminate against such individual in
39 compensation or in terms, conditions or privileges of employment.

40 (b) For an employment agency to discriminate against any individual
41 because of age, race, creed, color, national origin, sexual orientation,
42 GENDER IDENTITY OR EXPRESSION, military status, sex, disability, predis-
43 posing genetic characteristics, or marital status, in receiving, classi-
44 fying, disposing or otherwise acting upon applications for its services
45 or in referring an applicant or applicants to an employer or employers.

46 (c) For a labor organization, because of the age, race, creed, color,
47 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
48 military status, sex, disability, predisposing genetic characteristics,
49 or marital status of any individual, to exclude or to expel from its
50 membership such individual or to discriminate in any way against any of
51 its members or against any employer or any individual employed by an
52 employer.

53 (d) For any employer or employment agency to print or circulate or
54 cause to be printed or circulated any statement, advertisement or publi-
55 cation, or to use any form of application for employment or to make any
56 inquiry in connection with prospective employment, which expresses

1 directly or indirectly, any limitation, specification or discrimination
2 as to age, race, creed, color, national origin, sexual orientation,
3 GENDER IDENTITY OR EXPRESSION, military status, sex, disability, predis-
4 posing genetic characteristics, or marital status, or any intent to make
5 any such limitation, specification or discrimination, unless based upon
6 a bona fide occupational qualification; provided, however, that neither
7 this paragraph nor any provision of this chapter or other law shall be
8 construed to prohibit the department of civil service or the department
9 of personnel of any city containing more than one county from requesting
10 information from applicants for civil service examinations concerning
11 any of the aforementioned characteristics, other than sexual orientation
12 OR GENDER IDENTITY OR EXPRESSION, for the purpose of conducting studies
13 to identify and resolve possible problems in recruitment and testing of
14 members of minority groups to insure the fairest possible and equal
15 opportunities for employment in the civil service for all persons,
16 regardless of age, race, creed, color, national origin, sexual orien-
17 tation, GENDER IDENTITY OR EXPRESSION, military status, sex, disability,
18 predisposing genetic characteristics, or marital status.

19 S 6. Paragraphs (b), (c) and (d) of subdivision 1-a of section 296 of
20 the executive law, as amended by chapter 106 of the laws of 2003, are
21 amended to read as follows:

22 (b) To deny to or withhold from any person because of race, creed,
23 color, national origin, sexual orientation, GENDER IDENTITY OR
24 EXPRESSION, military status, sex, age, disability, or marital status,
25 the right to be admitted to or participate in a guidance program, an
26 apprenticeship training program, on-the-job training program, executive
27 training program, or other occupational training or retraining program;

28 (c) To discriminate against any person in his or her pursuit of such
29 programs or to discriminate against such a person in the terms, condi-
30 tions or privileges of such programs because of race, creed, color,
31 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
32 military status, sex, age, disability or marital status;

33 (d) To print or circulate or cause to be printed or circulated any
34 statement, advertisement or publication, or to use any form of applica-
35 tion for such programs or to make any inquiry in connection with such
36 program which expresses, directly or indirectly, any limitation, spec-
37 ification or discrimination as to race, creed, color, national origin,
38 sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex,
39 age, disability or marital status, or any intention to make any such
40 limitation, specification or discrimination, unless based on a bona fide
41 occupational qualification.

42 S 7. Paragraph (a) of subdivision 2 of section 296 of the executive
43 law, as amended by chapter 106 of the laws of 2003, is amended to read
44 as follows:

45 (a) It shall be an unlawful discriminatory practice for any person,
46 being the owner, lessee, proprietor, manager, superintendent, agent or
47 employee of any place of public accommodation, resort or amusement,
48 because of the race, creed, color, national origin, sexual orientation,
49 GENDER IDENTITY OR EXPRESSION, military status, sex, [or] disability or
50 marital status of any person, directly or indirectly, to refuse, with-
51 hold from or deny to such person any of the accommodations, advantages,
52 facilities or privileges thereof, including the extension of credit, or,
53 directly or indirectly, to publish, circulate, issue, display, post or
54 mail any written or printed communication, notice or advertisement, to
55 the effect that any of the accommodations, advantages, facilities and
56 privileges of any such place shall be refused, withheld from or denied

1 to any person on account of race, creed, color, national origin, sexual
2 orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, [or]
3 disability or marital status, or that the patronage or custom thereof of
4 any person of or purporting to be of any particular race, creed, color,
5 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
6 military status, sex or marital status, or having a disability is unwel-
7 come, objectionable or not acceptable, desired or solicited.

8 S 8. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section
9 296 of the executive law, paragraphs (a), (b) and (c) as amended and
10 paragraph (c-1) as added by chapter 106 of the laws of 2003, are amended
11 to read as follows:

12 (a) To refuse to sell, rent or lease or otherwise to deny to or with-
13 hold from any person or group of persons such housing accommodations
14 because of the race, creed, color, disability, national origin, sexual
15 orientation, GENDER IDENTITY OR EXPRESSION, military status, age, sex,
16 marital status, or familial status of such person or persons, or to
17 represent that any housing accommodation or land is not available for
18 inspection, sale, rental or lease when in fact it is so available.

19 (b) To discriminate against any person because of his or her race,
20 creed, color, disability, national origin, sexual orientation, GENDER
21 IDENTITY OR EXPRESSION, military status, age, sex, marital status, or
22 familial status in the terms, conditions or privileges of any publicly-
23 assisted housing accommodations or in the furnishing of facilities or
24 services in connection therewith.

25 (c) To cause to be made any written or oral inquiry or record concern-
26 ing the race, creed, color, disability, national origin, sexual orien-
27 tation, GENDER IDENTITY OR EXPRESSION, membership in the reserve armed
28 forces of the United States or in the organized militia of the state,
29 age, sex, marital status, or familial status of a person seeking to rent
30 or lease any publicly-assisted housing accommodation; provided, however,
31 that nothing in this subdivision shall prohibit a member of the reserve
32 armed forces of the United States or in the organized militia of the
33 state from voluntarily disclosing such membership.

34 (c-1) To print or circulate or cause to be printed or circulated any
35 statement, advertisement or publication, or to use any form of applica-
36 tion for the purchase, rental or lease of such housing accommodation or
37 to make any record or inquiry in connection with the prospective
38 purchase, rental or lease of such a housing accommodation which
39 expresses, directly or indirectly, any limitation, specification or
40 discrimination as to race, creed, color, national origin, sexual orien-
41 tation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disa-
42 bility, marital status, or familial status, or any intent to make any
43 such limitation, specification or discrimination.

44 S 9. Subdivision 3-b of section 296 of the executive law, as amended
45 by chapter 106 of the laws of 2003, is amended to read as follows:

46 3-b. It shall be an unlawful discriminatory practice for any real
47 estate broker, real estate salesperson or employee or agent thereof or
48 any other individual, corporation, partnership or organization for the
49 purpose of inducing a real estate transaction from which any such person
50 or any of its stockholders or members may benefit financially, to repre-
51 sent that a change has occurred or will or may occur in the composition
52 with respect to race, creed, color, national origin, sexual orientation,
53 GENDER IDENTITY OR EXPRESSION, military status, sex, disability, marital
54 status, or familial status of the owners or occupants in the block,
55 neighborhood or area in which the real property is located, and to
56 represent, directly or indirectly, that this change will or may result

1 in undesirable consequences in the block, neighborhood or area in which
2 the real property is located, including but not limited to the lowering
3 of property values, an increase in criminal or anti-social behavior, or
4 a decline in the quality of schools or other facilities.

5 S 10. Subdivision 4 of section 296 of the executive law, as amended by
6 chapter 106 of the laws of 2003, is amended to read as follows:

7 4. It shall be an unlawful discriminatory practice for an education
8 corporation or association which holds itself out to the public to be
9 non-sectarian and exempt from taxation pursuant to the provisions of
10 article four of the real property tax law to deny the use of its facili-
11 ties to any person otherwise qualified, or to permit the harassment of
12 any student or applicant, by reason of his race, color, religion, disa-
13 bility, national origin, sexual orientation, GENDER IDENTITY OR
14 EXPRESSION, military status, sex, age or marital status, except that any
15 such institution which establishes or maintains a policy of educating
16 persons of one sex exclusively may admit students of only one sex.

17 S 11. Subdivision 5 of section 296 of the executive law, as amended by
18 chapter 106 of the laws of 2003, is amended to read as follows:

19 5. (a) It shall be an unlawful discriminatory practice for the owner,
20 lessee, sub-lessee, assignee, or managing agent of, or other person
21 having the right to sell, rent or lease a housing accommodation,
22 constructed or to be constructed, or any agent or employee thereof:

23 (1) To refuse to sell, rent, lease or otherwise to deny to or withhold
24 from any person or group of persons such a housing accommodation because
25 of the race, creed, color, national origin, sexual orientation, GENDER
26 IDENTITY OR EXPRESSION, military status, sex, age, disability, marital
27 status, or familial status of such person or persons, or to represent
28 that any housing accommodation or land is not available for inspection,
29 sale, rental or lease when in fact it is so available.

30 (2) To discriminate against any person because of race, creed, color,
31 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
32 military status, sex, age, disability, marital status, or familial
33 status in the terms, conditions or privileges of the sale, rental or
34 lease of any such housing accommodation or in the furnishing of facili-
35 ties or services in connection therewith.

36 (3) To print or circulate or cause to be printed or circulated any
37 statement, advertisement or publication, or to use any form of applica-
38 tion for the purchase, rental or lease of such housing accommodation or
39 to make any record or inquiry in connection with the prospective
40 purchase, rental or lease of such a housing accommodation which
41 expresses, directly or indirectly, any limitation, specification or
42 discrimination as to race, creed, color, national origin, sexual orien-
43 tation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disa-
44 bility, marital status, or familial status, or any intent to make any
45 such limitation, specification or discrimination.

46 The provisions of this paragraph (a) shall not apply (1) to the rental
47 of a housing accommodation in a building which contains housing accommo-
48 dations for not more than two families living independently of each
49 other, if the owner resides in one of such housing accommodations, (2)
50 to the restriction of the rental of all rooms in a housing accommodation
51 to individuals of the same sex or (3) to the rental of a room or rooms
52 in a housing accommodation, if such rental is by the occupant of the
53 housing accommodation or by the owner of the housing accommodation and
54 the owner resides in such housing accommodation or (4) solely with
55 respect to age and familial status to the restriction of the sale,
56 rental or lease of housing accommodations exclusively to persons sixty-

two years of age or older and the spouse of any such person, or for housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

(b) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, land or commercial space:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons land or commercial space because of the race, creed, color, national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available;

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space; or in the furnishing of facilities or services in connection therewith;

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disability, marital status, or familial status; or any intent to make any such limitation, specification or discrimination.

(4) With respect to age and familial status, the provisions of this paragraph shall not apply to the restriction of the sale, rental or lease of land or commercial space exclusively to persons fifty-five years of age or older and the spouse of any such person, or to the restriction of the sale, rental or lease of land to be used for the construction, or location of housing accommodations exclusively for persons sixty-two years of age or older, or intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607(b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

(c) It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space to any person or group of persons because of the race, creed, color, national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation, land or commercial space is not available for inspection, sale, rental or lease when in fact it is so avail-

1 able, or otherwise to deny or withhold any housing accommodation, land
2 or commercial space or any facilities of any housing accommodation, land
3 or commercial space from any person or group of persons because of the
4 race, creed, color, national origin, sexual orientation, GENDER IDENTITY
5 OR EXPRESSION, military status, sex, age, disability, marital status, or
6 familial status of such person or persons.

7 (2) To print or circulate or cause to be printed or circulated any
8 statement, advertisement or publication, or to use any form of applica-
9 tion for the purchase, rental or lease of any housing accommodation,
10 land or commercial space or to make any record or inquiry in connection
11 with the prospective purchase, rental or lease of any housing accommo-
12 dation, land or commercial space which expresses, directly or indirect-
13 ly, any limitation, specification, or discrimination as to race, creed,
14 color, national origin, sexual orientation, GENDER IDENTITY OR
15 EXPRESSION, military status, sex, age, disability, marital status, or
16 familial status; or any intent to make any such limitation, specifica-
17 tion or discrimination.

18 (3) With respect to age and familial status, the provisions of this
19 paragraph shall not apply to the restriction of the sale, rental or
20 lease of any HOUSING ACCOMMODATION, land or commercial space exclusively
21 to persons fifty-five years of age or older and the spouse of any such
22 person, or to the restriction of the sale, rental or lease of any hous-
23 ing accommodation or land to be used for the construction or location of
24 housing accommodations for persons sixty-two years of age or older, or
25 intended and operated for occupancy by at least one person fifty-five
26 years of age or older per unit. In determining whether housing is
27 intended and operated for occupancy by persons fifty-five years of age
28 or older, Sec. 807 (b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the
29 federal Fair Housing Act of 1988, as amended, shall apply.

30 (d) It shall be an unlawful discriminatory practice for any real
31 estate board, because of the race, creed, color, national origin, sexual
32 orientation, GENDER IDENTITY OR EXPRESSION, military status, age, sex,
33 disability, marital status, or familial status of any individual who is
34 otherwise qualified for membership, to exclude or expel such individual
35 from membership, or to discriminate against such individual in the
36 terms, conditions and privileges of membership in such board.

37 (e) It shall be an unlawful discriminatory practice for the owner,
38 proprietor or managing agent of, or other person having the right to
39 provide care and services in, a private proprietary nursing home, conva-
40 lescent home, or home for adults, or an intermediate care facility, as
41 defined in section two of the social services law, heretofore
42 constructed, or to be constructed, or any agent or employee thereof, to
43 refuse to provide services and care in such home or facility to any
44 individual or to discriminate against any individual in the terms,
45 conditions, and privileges of such services and care solely because such
46 individual is a blind person. For purposes of this paragraph, a "blind
47 person" shall mean a person who is registered as a blind person with the
48 commission for the visually handicapped and who meets the definition of
49 a "blind person" pursuant to section three of chapter four hundred
50 fifteen of the laws of nineteen hundred thirteen entitled "An act to
51 establish a state commission for improving the condition of the blind of
52 the state of New York, and making an appropriation therefor".

53 (f) The provisions of this subdivision, as they relate to age, shall
54 not apply to persons under the age of eighteen years.

55 (g) It shall be an unlawful discriminatory practice for any person
56 offering or providing housing accommodations, land or commercial space

1 as described in paragraphs (a), (b), and (c) of this subdivision to make
2 or cause to be made any written or oral inquiry or record concerning
3 membership of any person in the state organized militia in relation to
4 the purchase, rental or lease of such housing accommodation, land, or
5 commercial space, provided, however, that nothing in this subdivision
6 shall prohibit a member of the state organized militia from voluntarily
7 disclosing such membership.

8 S 12. Paragraph (a) of subdivision 9 of section 296 of the executive
9 law, as amended by chapter 106 of the laws of 2003, is amended to read
10 as follows:

11 (a) It shall be an unlawful discriminatory practice for any fire
12 department or fire company therein, through any member or members there-
13 of, officers, board of fire commissioners or other body or office having
14 power of appointment of volunteer firefighters, directly or indirectly,
15 by ritualistic practice, constitutional or by-law prescription, by tacit
16 agreement among its members, or otherwise, to deny to any individual
17 membership in any volunteer fire department or fire company therein, or
18 to expel or discriminate against any volunteer member of a fire depart-
19 ment or fire company therein, because of the race, creed, color,
20 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
21 military status, sex or marital status of such individual.

22 S 13. Subdivision 13 of section 296 of the executive law, as amended
23 by chapter 106 of the laws of 2003, is amended to read as follows:

24 13. It shall be an unlawful discriminatory practice (i) for any person
25 to discriminate against, boycott or blacklist, or to refuse to buy from,
26 sell to or trade with, any person, because of the race, creed, color,
27 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
28 military status or sex of such person, or of such person's partners,
29 members, stockholders, directors, officers, managers, superintendents,
30 agents, employees, business associates, suppliers or customers, or (ii)
31 for any person wilfully to do any act or refrain from doing any act
32 which enables any such person to take such action. This subdivision
33 shall not apply to:

34 (a) Boycotts connected with labor disputes; or

35 (b) Boycotts to protest unlawful discriminatory practices.

36 S 14. Subdivisions 1, 2 and 3 of section 296-a of the executive law,
37 as amended by chapter 106 of the laws of 2003, are amended to read as
38 follows:

39 1. It shall be an unlawful discriminatory practice for any creditor or
40 any officer, agent or employee thereof:

41 a. In the case of applications for credit with respect to the
42 purchase, acquisition, construction, rehabilitation, repair or mainte-
43 nance of any housing accommodation, land or commercial space to discrim-
44 inate against any such applicant because of the race, creed, color,
45 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
46 military status, age, sex, marital status, disability, or familial
47 status of such applicant or applicants or any member, stockholder,
48 director, officer or employee of such applicant or applicants, or of the
49 prospective occupants or tenants of such housing accommodation, land or
50 commercial space, in the granting, withholding, extending or renewing,
51 or in the fixing of the rates, terms or conditions of, any such credit;

52 b. To discriminate in the granting, withholding, extending or renew-
53 ing, or in the fixing of the rates, terms or conditions of, any form of
54 credit, on the basis of race, creed, color, national origin, sexual
55 orientation, GENDER IDENTITY OR EXPRESSION, military status, age, sex,
56 marital status, disability, or familial status;

1 c. To use any form of application for credit or use or make any record
2 or inquiry which expresses, directly or indirectly, any limitation,
3 specification, or discrimination as to race, creed, color, national
4 origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military
5 status, age, sex, marital status, disability, or familial status;

6 d. To make any inquiry of an applicant concerning his or her capacity
7 to reproduce, or his or her use or advocacy of any form of birth control
8 or family planning;

9 e. To refuse to consider sources of an applicant's income or to
10 subject an applicant's income to discounting, in whole or in part,
11 because of an applicant's race, creed, color, national origin, sexual
12 orientation, GENDER IDENTITY OR EXPRESSION, military status, age, sex,
13 marital status, childbearing potential, disability, or familial status;

14 f. To discriminate against a married person because such person
15 neither uses nor is known by the surname of his or her spouse.

16 This paragraph shall not apply to any situation where the use of a
17 surname would constitute or result in a criminal act.

18 2. Without limiting the generality of subdivision one of this section,
19 it shall be considered discriminatory if, because of an applicant's or
20 class of applicants' race, creed, color, national origin, sexual orien-
21 tation, GENDER IDENTITY OR EXPRESSION, military status, age, sex, mari-
22 tal status or disability, or familial status, (i) an applicant or class
23 of applicants is denied credit in circumstances where other applicants
24 of like overall credit worthiness are granted credit, or (ii) special
25 requirements or conditions, such as requiring co-obligors or reapplica-
26 tion upon marriage, are imposed upon an applicant or class of applicants
27 in circumstances where similar requirements or conditions are not
28 imposed upon other applicants of like overall credit worthiness.

29 3. It shall not be considered discriminatory if credit differen-
30 tiations or decisions are based upon factually supportable, objective
31 differences in applicants' overall credit worthiness, which may include
32 reference to such factors as current income, assets and prior credit
33 history of such applicants, as well as reference to any other relevant
34 factually supportable data; provided, however, that no creditor shall
35 consider, in evaluating the credit worthiness of an applicant, aggregate
36 statistics or assumptions relating to race, creed, color, national
37 origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military
38 status, sex, marital status or disability, or to the likelihood of any
39 group of persons bearing or rearing children, or for that reason receiv-
40 ing diminished or interrupted income in the future.

41 S 15. Section 40-c of the civil rights law, as amended by chapter 2 of
42 the laws of 2002, is amended to read as follows:

43 S 40-c. Discrimination. 1. All persons within the jurisdiction of this
44 state shall be entitled to the equal protection of the laws of this
45 state or any subdivision thereof.

46 2. No person shall, because of race, creed, color, national origin,
47 sex, marital status, sexual orientation, GENDER IDENTITY OR EXPRESSION,
48 or disability, as such term is defined in section two hundred ninety-two
49 of the executive law, be subjected to any discrimination in his or her
50 civil rights, or to any harassment, as defined in section 240.25 of the
51 penal law, in the exercise thereof, by any other person or by any firm,
52 corporation or institution, or by the state or any agency or subdivision
53 of the state.

54 S 16. Paragraph (a) of subdivision 1 of section 313 of the education
55 law, as amended by chapter 2 of the laws of 2002, is amended to read as
56 follows:

1 (a) It is hereby declared to be the policy of the state that the Amer-
2 ican ideal of equality of opportunity requires that students, otherwise
3 qualified, be admitted to educational institutions and be given access
4 to all the educational programs and courses operated or provided by such
5 institutions without regard to race, color, sex, religion, creed, mari-
6 tal status, age, sexual orientation as defined in section two hundred
7 ninety-two of the executive law, GENDER IDENTITY OR EXPRESSION AS
8 DEFINED IN SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE LAW, or
9 national origin, except that, with regard to religious or denominational
10 educational institutions, students, otherwise qualified, shall have the
11 equal opportunity to attend therein without discrimination because of
12 race, color, sex, marital status, age, sexual orientation as defined in
13 section two hundred ninety-two of the executive law, GENDER IDENTITY OR
14 EXPRESSION AS DEFINED IN SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE
15 LAW, or national origin. It is a fundamental American right for members
16 of various religious faiths to establish and maintain educational insti-
17 tutions exclusively or primarily for students of their own religious
18 faith or to effectuate the religious principles in furtherance of which
19 they are maintained. Nothing herein contained shall impair or abridge
20 that right.

21 S 17. Subdivision 3 of section 313 of the education law, as amended by
22 chapter 2 of the laws of 2002, is amended to read as follows:

23 (3) Unfair educational practices. It shall be an unfair educational
24 practice for an educational institution after September fifteenth, nine-
25 teen hundred forty-eight:

26 (a) To exclude or limit or otherwise discriminate against any person
27 or persons seeking admission as students to such institution or to any
28 educational program or course operated or provided by such institution
29 because of race, religion, creed, sex, color, marital status, age, sexu-
30 al orientation as defined in section two hundred ninety-two of the exec-
31 utive law, GENDER IDENTITY OR EXPRESSION AS DEFINED IN SECTION TWO
32 HUNDRED NINETY-TWO OF THE EXECUTIVE LAW, or national origin; except that
33 nothing in this section shall be deemed to affect, in any way, the right
34 of a religious or denominational educational institution to select its
35 students exclusively or primarily from members of such religion or
36 denomination or from giving preference in such selection to such members
37 or to make such selection of its students as is calculated by such
38 institution to promote the religious principles for which it is estab-
39 lished or maintained. Nothing herein contained shall impair or abridge
40 the right of an independent institution, which establishes or maintains
41 a policy of educating persons of one sex exclusively, to admit students
42 of only one sex.

43 (b) To penalize any individual because he or she has initiated, testi-
44 fied, participated or assisted in any proceedings under this section.

45 (c) To accept any endowment or gift of money or property conditioned
46 upon teaching the doctrine of supremacy of any particular race.

47 (d) With respect to any individual who withdraws from attendance to
48 serve on active duty in the armed forces of the United States in time of
49 war, including any individual who withdrew from attendance on or after
50 August second, nineteen hundred ninety to serve on active duty in the
51 armed forces of the United States in the Persian Gulf conflict: (i) to
52 deny or limit the readmission of such individual to such institution or
53 to any educational program or course operated or provided by such insti-
54 tution because of such withdrawal from attendance or because of the
55 failure to complete any educational program or course due to such with-
56 drawal; (ii) to impose any academic penalty on such person because of

1 such withdrawal or because of the failure to complete any educational
2 program or course due to such withdrawal; (iii) to reduce or eliminate
3 any financial aid award granted to such individual which could not be
4 used, in whole or part, because of such withdrawal or because of the
5 failure to complete any educational program or course due to such with-
6 drawal; or (iv) to fail to provide a credit or refund of tuition and
7 fees paid by such individual for any semester, term or quarter not
8 completed because of such withdrawal or because of the failure to
9 complete any program or course due to such withdrawal.

10 (e) It shall not be an unfair educational practice for any educational
11 institution to use criteria other than race, religion, creed, sex,
12 color, marital status, age, sexual orientation as defined in section two
13 hundred ninety-two of the executive law, GENDER IDENTITY OR EXPRESSION
14 AS DEFINED IN SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE LAW, or
15 national origin in the admission of students to such institution or to
16 any of the educational programs and courses operated or provided by such
17 institution.

18 S 18. Section 485.00 of the penal law, as added by chapter 107 of the
19 laws of 2000, is amended to read as follows:

20 S 485.00 Legislative findings.

21 The legislature finds and determines as follows: criminal acts involv-
22 ing violence, intimidation and destruction of property based upon bias
23 and prejudice have become more prevalent in New York state in recent
24 years. The intolerable truth is that in these crimes, commonly and
25 justly referred to as "hate crimes", victims are intentionally selected,
26 in whole or in part, because of their race, color, national origin,
27 ancestry, gender, GENDER IDENTITY OR EXPRESSION, religion, religious
28 practice, age, disability or sexual orientation. Hate crimes do more
29 than threaten the safety and welfare of all citizens. They inflict on
30 victims incalculable physical and emotional damage and tear at the very
31 fabric of free society. Crimes motivated by invidious hatred toward
32 particular groups not only harm individual victims but send a powerful
33 message of intolerance and discrimination to all members of the group to
34 which the victim belongs. Hate crimes can and do intimidate and disrupt
35 entire communities and vitiate the civility that is essential to healthy
36 democratic processes. In a democratic society, citizens cannot be
37 required to approve of the beliefs and practices of others, but must
38 never commit criminal acts on account of them. Current law does not
39 adequately recognize the harm to public order and individual safety that
40 hate crimes cause. Therefore, our laws must be strengthened to provide
41 clear recognition of the gravity of hate crimes and the compelling
42 importance of preventing their recurrence.

43 Accordingly, the legislature finds and declares that hate crimes
44 should be prosecuted and punished with appropriate severity.

45 S 19. Subdivisions 1, 2 and 4 of section 485.05 of the penal law, as
46 added by chapter 107 of the laws of 2000, are amended to read as
47 follows:

48 1. A person commits a hate crime when he or she commits a specified
49 offense and either:

50 (a) intentionally selects the person against whom the offense is
51 committed or intended to be committed in whole or in substantial part
52 because of a belief or perception regarding the race, color, national
53 origin, ancestry, gender, GENDER IDENTITY OR EXPRESSION, religion, reli-
54 gious practice, age, disability or sexual orientation of a person,
55 regardless of whether the belief or perception is correct, or

(b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, GENDER IDENTITY OR EXPRESSION, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

2. Proof of race, color, national origin, ancestry, gender, GENDER IDENTITY OR EXPRESSION, religion, religious practice, age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying the people's burden under paragraph (a) or (b) of subdivision one of this section.

4. For purposes of this section:

(a) the term "age" means sixty years old or more;

(b) the term "disability" means a physical or mental impairment that substantially limits a major life activity[.];

(C) THE TERM "GENDER IDENTITY OR EXPRESSION" MEANS HAVING OR BEING PERCEIVED AS HAVING A GENDER IDENTITY, SELF-IMAGE, APPEARANCE, BEHAVIOR OR EXPRESSION WHETHER OR NOT THAT GENDER IDENTITY, SELF-IMAGE, APPEARANCE, BEHAVIOR OR EXPRESSION IS DIFFERENT FROM THAT TRADITIONALLY ASSOCIATED WITH THE SEX ASSIGNED TO THAT PERSON AT BIRTH.

S 20. Subdivision 3 of section 240.30 of the penal law, as amended by chapter 510 of the laws of 2008, is amended to read as follows:

3. Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, GENDER IDENTITY OR EXPRESSION, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or

S 21. The opening paragraph of section 240.31 of the penal law, as amended by chapter 49 of the laws of 2006, is amended to read as follows:

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, GENDER IDENTITY OR EXPRESSION, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

S 22. Section 240.00 of the penal law is amended by adding a new subdivision 7 to read as follows:

7. "GENDER IDENTITY OR EXPRESSION" MEANS HAVING OR BEING PERCEIVED AS HAVING A GENDER IDENTITY, SELF-IMAGE, APPEARANCE, BEHAVIOR OR EXPRESSION WHETHER OR NOT THAT GENDER IDENTITY, SELF-IMAGE, APPEARANCE, BEHAVIOR OR EXPRESSION IS DIFFERENT FROM THAT TRADITIONALLY ASSOCIATED WITH THE SEX ASSIGNED TO THAT PERSON AT BIRTH.

S 23. Paragraph (c) of subdivision 7 of section 200.50 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

(c) in the case of any hate crime, as defined in section 485.05 of the penal law, specifies, as applicable, that the defendant or defendants intentionally selected the person against whom the offense was committed or intended to be committed; or intentionally committed the act or acts constituting the offense, in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, GENDER IDENTITY OR EXPRESSION, religion, religious practice, age, disability or sexual orientation of a person; and

1 S 24. This act shall take effect on the thirtieth day after it shall
2 have become a law; provided, however, that sections eighteen through
3 twenty-three of this act shall take effect on the first of November next
4 succeeding the date on which it shall have become a law.