

6349

I N S E N A T E

January 31, 2012

Introduced by Sen. SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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:

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-

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

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ty have the capacity to make their own choices, follow their own beliefs and conduct their own lives as they see fit, consistent with existing law.

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

S 2. Subdivisions 1 and 2 of section 291 of the executive law, as amended by chapter 196 of the laws of 2010, are amended to read as follows:

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

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

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

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

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

9. To develop human rights plans and policies for the state and assist in their execution and to make investigations and studies appropriate to effectuate this article and to issue such publications and such results of investigations and research as in its judgement will tend to inform persons of the rights assured and remedies provided under this article, to promote good-will and minimize or eliminate discrimination because of

1 age, race, creed, color, national origin, sexual orientation, GENDER
2 IDENTITY OR EXPRESSION, military status, sex, disability or marital
3 status.

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

8 (a) For an employer or licensing agency, because of an individual's
9 age, race, creed, color, national origin, sexual orientation, GENDER
10 IDENTITY OR EXPRESSION, military status, sex, disability, predisposing
11 genetic characteristics, marital status, or domestic violence victim
12 status, to refuse to hire or employ or to bar or to discharge from
13 employment such individual or to discriminate against such individual in
14 compensation or in terms, conditions or privileges of employment.

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

21 (c) For a labor organization, because of the age, race, creed, color,
22 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
23 military status, sex, disability, predisposing genetic characteristics,
24 or marital status of any individual, to exclude or to expel from its
25 membership such individual or to discriminate in any way against any of
26 its members or against any employer or any individual employed by an
27 employer.

28 (d) For any employer or employment agency to print or circulate or
29 cause to be printed or circulated any statement, advertisement or publi-
30 cation, or to use any form of application for employment or to make any
31 inquiry in connection with prospective employment, which expresses
32 directly or indirectly, any limitation, specification or discrimination
33 as to age, race, creed, color, national origin, sexual orientation,
34 GENDER IDENTITY OR EXPRESSION, military status, sex, disability, predis-
35 posing genetic characteristics, or marital status, or any intent to make
36 any such limitation, specification or discrimination, unless based upon
37 a bona fide occupational qualification; provided, however, that neither
38 this paragraph nor any provision of this chapter or other law shall be
39 construed to prohibit the department of civil service or the department
40 of personnel of any city containing more than one county from requesting
41 information from applicants for civil service examinations concerning
42 any of the aforementioned characteristics, other than sexual orientation
43 OR GENDER IDENTITY OR EXPRESSION, for the purpose of conducting studies
44 to identify and resolve possible problems in recruitment and testing of
45 members of minority groups to insure the fairest possible and equal
46 opportunities for employment in the civil service for all persons,
47 regardless of age, race, creed, color, national origin, sexual orien-
48 tation, GENDER IDENTITY OR EXPRESSION, military status, sex, disability,
49 predisposing genetic characteristics, or marital status.

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

53 (b) To deny to or withhold from any person because of race, creed,
54 color, national origin, sexual orientation, GENDER IDENTITY OR
55 EXPRESSION, military status, sex, age, disability, or marital status,
56 the right to be admitted to or participate in a guidance program, an

1 apprenticeship training program, on-the-job training program, executive
2 training program, or other occupational training or retraining program;

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

8 (d) To print or circulate or cause to be printed or circulated any
9 statement, advertisement or publication, or to use any form of applica-
10 tion for such programs or to make any inquiry in connection with such
11 program which expresses, directly or indirectly, any limitation, spec-
12 ification or discrimination as to race, creed, color, national origin,
13 sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex,
14 age, disability or marital status, or any intention to make any such
15 limitation, specification or discrimination, unless based on a bona fide
16 occupational qualification.

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

20 (a) It shall be an unlawful discriminatory practice for any person,
21 being the owner, lessee, proprietor, manager, superintendent, agent or
22 employee of any place of public accommodation, resort or amusement,
23 because of the race, creed, color, national origin, sexual orientation,
24 GENDER IDENTITY OR EXPRESSION, military status, sex, [or] disability or
25 marital status of any person, directly or indirectly, to refuse, with-
26 hold from or deny to such person any of the accommodations, advantages,
27 facilities or privileges thereof, including the extension of credit, or,
28 directly or indirectly, to publish, circulate, issue, display, post or
29 mail any written or printed communication, notice or advertisement, to
30 the effect that any of the accommodations, advantages, facilities and
31 privileges of any such place shall be refused, withheld from or denied
32 to any person on account of race, creed, color, national origin, sexual
33 orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, [or]
34 disability or marital status, or that the patronage or custom thereat of
35 any person of or purporting to be of any particular race, creed, color,
36 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
37 military status, sex or marital status, or having a disability is unwel-
38 come, objectionable or not acceptable, desired or solicited.

39 S 8. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section
40 296 of the executive law, paragraphs (a), (b) and (c) as amended and
41 paragraph (c-1) as added by chapter 106 of the laws of 2003, are amended
42 to read as follows:

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

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

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

(c-1) 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 housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation 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.

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

3-b. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof or any other individual, corporation, partnership or organization for the purpose of inducing a real estate transaction from which any such person or any of its stockholders or members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, disability, marital status, or familial status of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities.

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

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

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

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

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because

1 of the race, creed, color, national origin, sexual orientation, GENDER
2 IDENTITY OR EXPRESSION, military status, sex, age, disability, marital
3 status, or familial status of such person or persons, or to represent
4 that any housing accommodation or land is not available for inspection,
5 sale, rental or lease when in fact it is so available.

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

12 (3) To print or circulate or cause to be printed or circulated any
13 statement, advertisement or publication, or to use any form of applica-
14 tion for the purchase, rental or lease of such housing accommodation or
15 to make any record or inquiry in connection with the prospective
16 purchase, rental or lease of such a housing accommodation which
17 expresses, directly or indirectly, any limitation, specification or
18 discrimination as to race, creed, color, national origin, sexual orien-
19 tation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disa-
20 bility, marital status, or familial status, or any intent to make any
21 such limitation, specification or discrimination.

22 The provisions of this paragraph (a) shall not apply (1) to the rental
23 of a housing accommodation in a building which contains housing accommo-
24 dations for not more than two families living independently of each
25 other, if the owner resides in one of such housing accommodations, (2)
26 to the restriction of the rental of all rooms in a housing accommodation
27 to individuals of the same sex or (3) to the rental of a room or rooms
28 in a housing accommodation, if such rental is by the occupant of the
29 housing accommodation or by the owner of the housing accommodation and
30 the owner resides in such housing accommodation or (4) solely with
31 respect to age and familial status to the restriction of the sale,
32 rental or lease of housing accommodations exclusively to persons sixty-
33 two years of age or older and the spouse of any such person, or for
34 housing intended and operated for occupancy by at least one person
35 fifty-five years of age or older per unit. In determining whether hous-
36 ing is intended and operated for occupancy by persons fifty-five years
37 of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the
38 federal Fair Housing Act of 1988, as amended, shall apply.

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

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

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

1 (3) To print or circulate or cause to be printed or circulated any
2 statement, advertisement or publication, or to use any form of applica-
3 tion for the purchase, rental or lease of such land or commercial space
4 or to make any record or inquiry in connection with the prospective
5 purchase, rental or lease of such land or commercial space which
6 expresses, directly or indirectly, any limitation, specification or
7 discrimination as to race, creed, color, national origin, sexual orien-
8 tation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disa-
9 bility, marital status, or familial status; or any intent to make any
10 such limitation, specification or discrimination.

11 (4) With respect to age and familial status, the provisions of this
12 paragraph shall not apply to the restriction of the sale, rental or
13 lease of land or commercial space exclusively to persons fifty-five
14 years of age or older and the spouse of any such person, or to the
15 restriction of the sale, rental or lease of land to be used for the
16 construction, or location of housing accommodations exclusively for
17 persons sixty-two years of age or older, or intended and operated for
18 occupancy by at least one person fifty-five years of age or older per
19 unit. In determining whether housing is intended and operated for occu-
20 pancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c)
21 (42 U.S.C. 3607(b) (2) (c)) of the federal Fair Housing Act of 1988, as
22 amended, shall apply.

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

25 (1) To refuse to sell, rent or lease any housing accommodation, land
26 or commercial space to any person or group of persons or to refuse to
27 negotiate for the sale, rental or lease, of any housing accommodation,
28 land or commercial space to any person or group of persons because of
29 the race, creed, color, national origin, sexual orientation, GENDER
30 IDENTITY OR EXPRESSION, military status, sex, age, disability, marital
31 status, or familial status of such person or persons, or to represent
32 that any housing accommodation, land or commercial space is not avail-
33 able for inspection, sale, rental or lease when in fact it is so avail-
34 able, or otherwise to deny or withhold any housing accommodation, land
35 or commercial space or any facilities of any housing accommodation, land
36 or commercial space from any person or group of persons because of the
37 race, creed, color, national origin, sexual orientation, GENDER IDENTITY
38 OR EXPRESSION, military status, sex, age, disability, marital status, or
39 familial status of such person or persons.

40 (2) To print or circulate or cause to be printed or circulated any
41 statement, advertisement or publication, or to use any form of applica-
42 tion for the purchase, rental or lease of any housing accommodation,
43 land or commercial space or to make any record or inquiry in connection
44 with the prospective purchase, rental or lease of any housing accommo-
45 dation, land or commercial space which expresses, directly or indirect-
46 ly, any limitation, specification, or discrimination as to race, creed,
47 color, national origin, sexual orientation, GENDER IDENTITY OR
48 EXPRESSION, military status, sex, age, disability, marital status, or
49 familial status; or any intent to make any such limitation, specifica-
50 tion or discrimination.

51 (3) With respect to age and familial status, the provisions of this
52 paragraph shall not apply to the restriction of the sale, rental or
53 lease of any HOUSING ACCOMMODATION, land or commercial space exclusively
54 to persons fifty-five years of age or older and the spouse of any such
55 person, or to the restriction of the sale, rental or lease of any hous-
56 ing accommodation or land to be used for the construction or location of

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

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

14 (e) It shall be an unlawful discriminatory practice for the owner,
15 proprietor or managing agent of, or other person having the right to
16 provide care and services in, a private proprietary nursing home, conva-
17 lescent home, or home for adults, or an intermediate care facility, as
18 defined in section two of the social services law, heretofore
19 constructed, or to be constructed, or any agent or employee thereof, to
20 refuse to provide services and care in such home or facility to any
21 individual or to discriminate against any individual in the terms,
22 conditions, and privileges of such services and care solely because such
23 individual is a blind person. For purposes of this paragraph, a "blind
24 person" shall mean a person who is registered as a blind person with the
25 commission for the visually handicapped and who meets the definition of
26 a "blind person" pursuant to section three of chapter four hundred
27 fifteen of the laws of nineteen hundred thirteen entitled "An act to
28 establish a state commission for improving the condition of the blind of
29 the state of New York, and making an appropriation therefor".

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

32 (g) It shall be an unlawful discriminatory practice for any person
33 offering or providing housing accommodations, land or commercial space
34 as described in paragraphs (a), (b), and (c) of this subdivision to make
35 or cause to be made any written or oral inquiry or record concerning
36 membership of any person in the state organized militia in relation to
37 the purchase, rental or lease of such housing accommodation, land, or
38 commercial space, provided, however, that nothing in this subdivision
39 shall prohibit a member of the state organized militia from voluntarily
40 disclosing such membership.

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

44 (a) It shall be an unlawful discriminatory practice for any fire
45 department or fire company therein, through any member or members there-
46 of, officers, board of fire commissioners or other body or office having
47 power of appointment of volunteer firefighters, directly or indirectly,
48 by ritualistic practice, constitutional or by-law prescription, by tacit
49 agreement among its members, or otherwise, to deny to any individual
50 membership in any volunteer fire department or fire company therein, or
51 to expel or discriminate against any volunteer member of a fire depart-
52 ment or fire company therein, because of the race, creed, color,
53 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
54 military status, sex or marital status of such individual.

55 S 13. Subdivision 13 of section 296 of the executive law, as amended
56 by chapter 196 of the laws of 2010, is amended to read as follows:

1 13. It shall be an unlawful discriminatory practice (i) for any person
2 to boycott or blacklist, or to refuse to buy from, sell to or trade
3 with, or otherwise discriminate against any person, because of the race,
4 creed, color, national origin, sexual orientation, GENDER IDENTITY OR
5 EXPRESSION, military status, sex, or disability of such person, or of
6 such person's partners, members, stockholders, directors, officers,
7 managers, superintendents, agents, employees, business associates,
8 suppliers or customers, or (ii) for any person wilfully to do any act or
9 refrain from doing any act which enables any such person to take such
10 action. This subdivision shall not apply to:

11 (a) Boycotts connected with labor disputes; or

12 (b) Boycotts to protest unlawful discriminatory practices.

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

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

18 a. In the case of applications for credit with respect to the
19 purchase, acquisition, construction, rehabilitation, repair or mainte-
20 nance of any housing accommodation, land or commercial space to discrim-
21 inate against any such applicant because of the race, creed, color,
22 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
23 military status, age, sex, marital status, disability, or familial
24 status of such applicant or applicants or any member, stockholder,
25 director, officer or employee of such applicant or applicants, or of the
26 prospective occupants or tenants of such housing accommodation, land or
27 commercial space, in the granting, withholding, extending or renewing,
28 or in the fixing of the rates, terms or conditions of, any such credit;

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

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

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

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

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

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

51 2. Without limiting the generality of subdivision one of this section,
52 it shall be considered discriminatory if, because of an applicant's or
53 class of applicants' race, creed, color, national origin, sexual orien-
54 tation, GENDER IDENTITY OR EXPRESSION, military status, age, sex, mari-
55 tal status or disability, or familial status, (i) an applicant or class
56 of applicants is denied credit in circumstances where other applicants

1 of like overall credit worthiness are granted credit, or (ii) special
2 requirements or conditions, such as requiring co-obligors or reapplica-
3 tion upon marriage, are imposed upon an applicant or class of applicants
4 in circumstances where similar requirements or conditions are not
5 imposed upon other applicants of like overall credit worthiness.

6 3. It shall not be considered discriminatory if credit differen-
7 tiations or decisions are based upon factually supportable, objective
8 differences in applicants' overall credit worthiness, which may include
9 reference to such factors as current income, assets and prior credit
10 history of such applicants, as well as reference to any other relevant
11 factually supportable data; provided, however, that no creditor shall
12 consider, in evaluating the credit worthiness of an applicant, aggregate
13 statistics or assumptions relating to race, creed, color, national
14 origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military
15 status, sex, marital status or disability, or to the likelihood of any
16 group of persons bearing or rearing children, or for that reason receiv-
17 ing diminished or interrupted income in the future.

18 S 15. Paragraph (b) of subdivision 2 of section 296-b of the executive
19 law, as added by chapter 481 of the laws of 2010, is amended to read as
20 follows:

21 (b) Subject a domestic worker to unwelcome harassment based on gender,
22 race, religion, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION or
23 national origin, where such harassment has the purpose or effect of
24 unreasonably interfering with an individual's work performance by creat-
25 ing an intimidating, hostile, or offensive working environment.

26 S 16. Section 40-c of the civil rights law, as amended by chapter 2 of
27 the laws of 2002, is amended to read as follows:

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

31 2. No person shall, because of race, creed, color, national origin,
32 sex, marital status, sexual orientation, GENDER IDENTITY OR EXPRESSION,
33 or disability, as such term is defined in section two hundred ninety-two
34 of the executive law, be subjected to any discrimination in his or her
35 civil rights, or to any harassment, as defined in section 240.25 of the
36 penal law, in the exercise thereof, by any other person or by any firm,
37 corporation or institution, or by the state or any agency or subdivision
38 of the state.

39 S 17. Paragraph (a) of subdivision 1 of section 313 of the education
40 law, as amended by chapter 2 of the laws of 2002, is amended to read as
41 follows:

42 (a) It is hereby declared to be the policy of the state that the Amer-
43 ican ideal of equality of opportunity requires that students, otherwise
44 qualified, be admitted to educational institutions and be given access
45 to all the educational programs and courses operated or provided by such
46 institutions without regard to race, color, sex, religion, creed, mari-
47 tal status, age, sexual orientation as defined in section two hundred
48 ninety-two of the executive law, GENDER IDENTITY OR EXPRESSION AS
49 DEFINED IN SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE LAW, or
50 national origin, except that, with regard to religious or denominational
51 educational institutions, students, otherwise qualified, shall have the
52 equal opportunity to attend therein without discrimination because of
53 race, color, sex, marital status, age, sexual orientation as defined in
54 section two hundred ninety-two of the executive law, GENDER IDENTITY OR
55 EXPRESSION AS DEFINED IN SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE
56 LAW, or national origin. It is a fundamental American right for members

1 of various religious faiths to establish and maintain educational insti-
2 tutions exclusively or primarily for students of their own religious
3 faith or to effectuate the religious principles in furtherance of which
4 they are maintained. Nothing herein contained shall impair or abridge
5 that right.

6 S 18. Subdivision 3 of section 313 of the education law, as amended by
7 chapter 2 of the laws of 2002, is amended to read as follows:

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

11 (a) To exclude or limit or otherwise discriminate against any person
12 or persons seeking admission as students to such institution or to any
13 educational program or course operated or provided by such institution
14 because of race, religion, creed, sex, color, marital status, age, sexu-
15 al orientation as defined in section two hundred ninety-two of the exec-
16 utive law, GENDER IDENTITY OR EXPRESSION AS DEFINED IN SECTION TWO
17 HUNDRED NINETY-TWO OF THE EXECUTIVE LAW, or national origin; except that
18 nothing in this section shall be deemed to affect, in any way, the right
19 of a religious or denominational educational institution to select its
20 students exclusively or primarily from members of such religion or
21 denomination or from giving preference in such selection to such members
22 or to make such selection of its students as is calculated by such
23 institution to promote the religious principles for which it is estab-
24 lished or maintained. Nothing herein contained shall impair or abridge
25 the right of an independent institution, which establishes or maintains
26 a policy of educating persons of one sex exclusively, to admit students
27 of only one sex.

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

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

32 (d) With respect to any individual who withdraws from attendance to
33 serve on active duty in the armed forces of the United States in time of
34 war, including any individual who withdrew from attendance on or after
35 August second, nineteen hundred ninety to serve on active duty in the
36 armed forces of the United States in the Persian Gulf conflict: (i) to
37 deny or limit the readmission of such individual to such institution or
38 to any educational program or course operated or provided by such insti-
39 tution because of such withdrawal from attendance or because of the
40 failure to complete any educational program or course due to such with-
41 drawal; (ii) to impose any academic penalty on such person because of
42 such withdrawal or because of the failure to complete any educational
43 program or course due to such withdrawal; (iii) to reduce or eliminate
44 any financial aid award granted to such individual which could not be
45 used, in whole or part, because of such withdrawal or because of the
46 failure to complete any educational program or course due to such with-
47 drawal; or (iv) to fail to provide a credit or refund of tuition and
48 fees paid by such individual for any semester, term or quarter not
49 completed because of such withdrawal or because of the failure to
50 complete any program or course due to such withdrawal.

51 (e) It shall not be an unfair educational practice for any educational
52 institution to use criteria other than race, religion, creed, sex,
53 color, marital status, age, sexual orientation as defined in section two
54 hundred ninety-two of the executive law, GENDER IDENTITY OR EXPRESSION
55 AS DEFINED IN SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE LAW, or
56 national origin in the admission of students to such institution or to

1 any of the educational programs and courses operated or provided by such
2 institution.

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

5 S 485.00 Legislative findings.

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

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

30 S 20. Subdivisions 1, 2 and 4 of section 485.05 of the penal law, as
31 added by chapter 107 of the laws of 2000, are amended to read as
32 follows:

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

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

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

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

53 4. For purposes of this section:

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

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

1 (C) THE TERM "GENDER IDENTITY OR EXPRESSION" MEANS HAVING OR BEING
2 PERCEIVED AS HAVING A GENDER IDENTITY, SELF-IMAGE, APPEARANCE, BEHAVIOR
3 OR EXPRESSION WHETHER OR NOT THAT GENDER IDENTITY, SELF-IMAGE, APPEAR-
4 ANCE, BEHAVIOR OR EXPRESSION IS DIFFERENT FROM THAT TRADITIONALLY ASSO-
5 CIATED WITH THE SEX ASSIGNED TO THAT PERSON AT BIRTH.

6 S 21. Subdivision 3 of section 240.30 of the penal law, as amended by
7 chapter 510 of the laws of 2008, is amended to read as follows:

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

14 S 22. The opening paragraph of section 240.31 of the penal law, as
15 amended by chapter 49 of the laws of 2006, is amended to read as
16 follows:

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

23 S 23. Section 240.00 of the penal law is amended by adding a new
24 subdivision 7 to read as follows:

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

30 S 24. Paragraph (c) of subdivision 7 of section 200.50 of the criminal
31 procedure law, as amended by chapter 7 of the laws of 2007, is amended
32 to read as follows:

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

41 S 25. This act shall take effect on the thirtieth day after it shall
42 have become a law; provided, however, that sections nineteen through
43 twenty-four of this act shall take effect on the first of November next
44 succeeding the date on which it shall have become a law.