

STATE OF NEW YORK

8153

IN SENATE

January 26, 2022

Introduced by Sen. HOYLMAN -- 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, in relation to prohibiting discrimination on the basis of a person's height or weight in opportunities of employment, housing, and access to public accommodations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (a), (b), (c), (d) and (h) of subdivision 1,
2 paragraphs (b), (c) and (d) of subdivision 1-a, paragraph (a) of subdivi-
3 sion 2, paragraphs (a), (b), (c) and (c-1) of subdivision 2-a, subdivi-
4 sions 3-b and 4, subparagraphs 1, 2 and 3 of paragraph (a), subpara-
5 graphs 1, 2 and 3 of paragraph (b), subparagraphs 1 and 2 of paragraph
6 (c) and paragraph (d) of subdivision 5, paragraph (a) of subdivision 9
7 and subdivision 13 of section 296 of the executive law, paragraph (a) of
8 subdivision 1 as separately amended by chapters 8 and 176 of the laws of
9 2019, paragraphs (b), (c) and (d) of subdivision 1 as amended by chapter
10 8 of the laws of 2019 and paragraph (h) of subdivision 1 as amended by
11 chapter 161 of the laws of 2019, paragraphs (b), (c) and (d) of subdivi-
12 sion 1-a, paragraph (a) of subdivision 2, subdivision 3-b, subparagraphs
13 1, 2 and 3 of paragraph (b) of subdivision 5, paragraph (a) of subdivi-
14 sion 9 and subdivision 13 as amended by chapter 8 of the laws of 2019,
15 paragraphs (a), (b), (c) and (c-1) of subdivision 2-a as amended by
16 section 3 of part T of chapter 56 of the laws of 2019, subparagraphs 1
17 and 2 of paragraph (c) of subdivision 5 as amended by section 5 and
18 paragraph (d) of subdivision 5 as amended by section 6 of part T of
19 chapter 56 of the laws of 2019, subdivision 4 as separately amended by
20 chapters 8 and 116 of the laws of 2019, subparagraphs 1, 2 and 3 of
21 paragraph (a) of subdivision 5 as amended by chapter 300 of the laws of
22 2021, are amended to read as follows:

23 (a) For an employer or licensing agency, because of an individual's
24 age, race, creed, color, national origin, sexual orientation, gender
25 identity or expression, military status, sex, height, weight, disabili-
26 ty, predisposing genetic characteristics, familial status, marital
27 status, or status as a victim of domestic violence, to refuse to hire or
28 employ or to bar or to discharge from employment such individual or to

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

LBD13135-03-1

1 discriminate against such individual in compensation or in terms, condi-
2 tions or privileges of employment.

3 (b) For an employment agency to discriminate against any individual
4 because of age, race, creed, color, national origin, sexual orientation,
5 gender identity or expression, military status, sex, height, weight,
6 disability, predisposing genetic characteristics, familial status, or
7 marital status, in receiving, classifying, disposing or otherwise acting
8 upon applications for its services or in referring an applicant or
9 applicants to an employer or employers.

10 (c) For a labor organization, because of the age, race, creed, color,
11 national origin, sexual orientation, gender identity or expression,
12 military status, sex, height, weight, disability, predisposing genetic
13 characteristics, familial status, or marital status of any individual,
14 to exclude or to expel from its membership such individual or to
15 discriminate in any way against any of its members or against any
16 employer or any individual employed by an employer.

17 (d) For any employer or employment agency to print or circulate or
18 cause to be printed or circulated any statement, advertisement or publi-
19 cation, or to use any form of application for employment or to make any
20 inquiry in connection with prospective employment, which expresses
21 directly or indirectly, any limitation, specification or discrimination
22 as to age, race, creed, color, national origin, sexual orientation,
23 gender identity or expression, military status, sex, height, weight,
24 disability, predisposing genetic characteristics, familial status, or
25 marital status, or any intent to make any such limitation, specification
26 or discrimination, unless based upon a bona fide occupational qualifica-
27 tion; provided, however, that neither this paragraph nor any provision
28 of this chapter or other law shall be construed to prohibit the depart-
29 ment of civil service or the department of personnel of any city
30 containing more than one county from requesting information from appli-
31 cants for civil service examinations concerning any of the aforemen-
32 tioned characteristics, other than sexual orientation, for the purpose
33 of conducting studies to identify and resolve possible problems in
34 recruitment and testing of members of minority groups to insure the
35 fairest possible and equal opportunities for employment in the civil
36 service for all persons, regardless of age, race, creed, color, national
37 origin, sexual orientation or gender identity or expression, military
38 status, sex, height, weight, disability, predisposing genetic character-
39 istics, familial status, or marital status.

40 (h) For an employer, licensing agency, employment agency or labor
41 organization to subject any individual to harassment because of an indi-
42 vidual's age, race, creed, color, national origin, sexual orientation,
43 gender identity or expression, military status, sex, height, weight,
44 disability, predisposing genetic characteristics, familial status, mari-
45 tal status, domestic violence victim status, or because the individual
46 has opposed any practices forbidden under this article or because the
47 individual has filed a complaint, testified or assisted in any proceed-
48 ing under this article, regardless of whether such harassment would be
49 considered severe or pervasive under precedent applied to harassment
50 claims. Such harassment is an unlawful discriminatory practice when it
51 subjects an individual to inferior terms, conditions or privileges of
52 employment because of the individual's membership in one or more of
53 these protected categories. The fact that such individual did not make a
54 complaint about the harassment to such employer, licensing agency,
55 employment agency or labor organization shall not be determinative of
56 whether such employer, licensing agency, employment agency or labor

1 organization shall be liable. Nothing in this section shall imply that
2 an employee must demonstrate the existence of an individual to whom the
3 employee's treatment must be compared. It shall be an affirmative
4 defense to liability under this subdivision that the harassing conduct
5 does not rise above the level of what a reasonable victim of discrimi-
6 nation with the same protected characteristic or characteristics would
7 consider petty slights or trivial inconveniences.

8 (b) To deny to or withhold from any person because of race, creed,
9 color, national origin, sexual orientation, gender identity or
10 expression, military status, sex, height, weight, age, disability, fami-
11 lial status, or marital status, the right to be admitted to or partic-
12 ipate in a guidance program, an apprenticeship training program, on-the-
13 job training program, executive training program, or other occupational
14 training or retraining program;

15 (c) To discriminate against any person in his or her pursuit of such
16 programs or to discriminate against such a person in the terms, condi-
17 tions or privileges of such programs because of race, creed, color,
18 national origin, sexual orientation, gender identity or expression,
19 military status, sex, height, weight, age, disability, familial status
20 or marital status;

21 (d) To print or circulate or cause to be printed or circulated any
22 statement, advertisement or publication, or to use any form of applica-
23 tion for such programs or to make any inquiry in connection with such
24 program which expresses, directly or indirectly, any limitation, spec-
25 ification or discrimination as to race, creed, color, national origin,
26 sexual orientation, gender identity or expression, military status, sex,
27 height, weight, age, disability, familial status or marital status, or
28 any intention to make any such limitation, specification or discrimi-
29 nation, unless based on a bona fide occupational qualification.

30 (a) It shall be an unlawful discriminatory practice for any person,
31 being the owner, lessee, proprietor, manager, superintendent, agent or
32 employee of any place of public accommodation, resort or amusement,
33 because of the race, creed, color, national origin, sexual orientation,
34 gender identity or expression, military status, sex, height, weight,
35 disability or marital status of any person, directly or indirectly, to
36 refuse, withhold from or deny to such person any of the accommodations,
37 advantages, facilities or privileges thereof, including the extension of
38 credit, or, directly or indirectly, to publish, circulate, issue,
39 display, post or mail any written or printed communication, notice or
40 advertisement, to the effect that any of the accommodations, advantages,
41 facilities and privileges of any such place shall be refused, withheld
42 from or denied to any person on account of race, creed, color, national
43 origin, sexual orientation, gender identity or expression, military
44 status, sex, height, weight, disability or marital status, or that the
45 patronage or custom thereat of any person of or purporting to be of any
46 particular race, creed, color, national origin, sexual orientation,
47 gender identity or expression, military status, sex or marital status,
48 or having a disability is unwelcome, objectionable or not acceptable,
49 desired or solicited.

50 (a) To refuse to sell, rent or lease or otherwise to deny to or with-
51 hold from any person or group of persons such housing accommodations
52 because of the race, creed, color, disability, national origin, sexual
53 orientation, gender identity or expression, military status, age, sex,
54 height, weight, marital status, lawful source of income or familial
55 status of such person or persons, or to represent that any housing

1 accommodation or land is not available for inspection, sale, rental or
2 lease when in fact it is so available.

3 (b) To discriminate against any person because of his or her race,
4 creed, color, disability, national origin, sexual orientation, gender
5 identity or expression, military status, age, sex, height, weight, mari-
6 tal status, lawful source of income or familial status in the terms,
7 conditions or privileges of any publicly-assisted housing accommodations
8 or in the furnishing of facilities or services in connection therewith.

9 (c) To cause to be made any written or oral inquiry or record concern-
10 ing the race, creed, color, disability, national origin, sexual orien-
11 tation, gender identity or expression, membership in the reserve armed
12 forces of the United States or in the organized militia of the state,
13 age, sex, height, weight, marital status, lawful source of income or
14 familial status of a person seeking to rent or lease any publicly-as-
15 sisted housing accommodation; provided, however, that nothing in this
16 subdivision shall prohibit a member of the reserve armed forces of the
17 United States or in the organized militia of the state from voluntarily
18 disclosing such membership.

19 (c-1) To print or circulate or cause to be printed or circulated any
20 statement, advertisement or publication, or to use any form of applica-
21 tion for the purchase, rental or lease of such housing accommodation or
22 to make any record or inquiry in connection with the prospective
23 purchase, rental or lease of such a housing accommodation which
24 expresses, directly or indirectly, any limitation, specification or
25 discrimination as to race, creed, color, national origin, sexual orien-
26 tation, gender identity or expression, military status, sex, height,
27 weight, age, disability, marital status, lawful source of income or
28 familial status, or any intent to make any such limitation, specifica-
29 tion or discrimination.

30 3-b. It shall be an unlawful discriminatory practice for any real
31 estate broker, real estate salesperson or employee or agent thereof or
32 any other individual, corporation, partnership or organization for the
33 purpose of inducing a real estate transaction from which any such person
34 or any of its stockholders or members may benefit financially, to repre-
35 sent that a change has occurred or will or may occur in the composition
36 with respect to race, creed, color, national origin, sexual orientation,
37 gender identity or expression, military status, sex, height, weight,
38 disability, marital status, or familial status of the owners or occu-
39 pants in the block, neighborhood or area in which the real property is
40 located, and to represent, directly or indirectly, that this change will
41 or may result in undesirable consequences in the block, neighborhood or
42 area in which the real property is located, including but not limited to
43 the lowering of property values, an increase in criminal or anti-social
44 behavior, or a decline in the quality of schools or other facilities.

45 4. It shall be an unlawful discriminatory practice for an educational
46 institution to deny the use of its facilities to any person otherwise
47 qualified, or to permit the harassment of any student or applicant, by
48 reason of his race, color, religion, disability, national origin, sexual
49 orientation, gender identity or expression, military status, sex,
50 height, weight, age or marital status, except that any such institution
51 which establishes or maintains a policy of educating persons of one sex
52 exclusively may admit students of only one sex.

53 (1) To refuse to sell, rent, lease or otherwise to deny to or withhold
54 from any person or group of persons such a housing accommodation because
55 of the race, creed, color, national origin, sexual orientation, gender
56 identity or expression, military status, sex, height, weight, age, disa-

bility, marital status, lawful source of income 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, height, weight, age, disability, marital status, lawful source of income or familial status in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation 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 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, height, weight, age, disability, marital status, lawful source of income or familial status, or any intent to make any such limitation, specification or discrimination.

(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, height, weight, 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, height, weight, 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, height, weight, age, disability, marital status, or familial status; or any intent to make any such limitation, specification or discrimination.

(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, height, weight, age, disability, marital status, lawful source of income 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 available, or otherwise to deny or withhold any housing accommodation, land or commercial space or any facili-

1 ties of any housing accommodation, land or commercial space from any
2 person or group of persons because of the race, creed, color, national
3 origin, sexual orientation, gender identity or expression, military
4 status, sex, height, weight, age, disability, marital status, lawful
5 source of income or familial status of such person or persons.

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

17 (d) It shall be an unlawful discriminatory practice for any real
18 estate board, because of the race, creed, color, national origin, sexual
19 orientation, gender identity or expression, military status, age, sex,
20 height, weight, disability, marital status, lawful source of income or
21 familial status of any individual who is otherwise qualified for member-
22 ship, to exclude or expel such individual from membership, or to
23 discriminate against such individual in the terms, conditions and privi-
24 leges of membership in such board.

25 (a) It shall be an unlawful discriminatory practice for any fire
26 department or fire company therein, through any member or members there-
27 of, officers, board of fire commissioners or other body or office having
28 power of appointment of volunteer firefighters, directly or indirectly,
29 by ritualistic practice, constitutional or by-law prescription, by tacit
30 agreement among its members, or otherwise, to deny to any individual
31 membership in any volunteer fire department or fire company therein, or
32 to expel or discriminate against any volunteer member of a fire depart-
33 ment or fire company therein, because of the race, creed, color,
34 national origin, sexual orientation, gender identity or expression,
35 military status, sex, height, weight, marital status, or familial
36 status, of such individual.

37 13. It shall be an unlawful discriminatory practice (i) for any person
38 to boycott or blacklist, or to refuse to buy from, sell to or trade
39 with, or otherwise discriminate against any person, because of the race,
40 creed, color, national origin, sexual orientation, gender identity or
41 expression, military status, sex, height, weight, disability, or fami-
42 lial status, of such person, or of such person's partners, members,
43 stockholders, directors, officers, managers, superintendents, agents,
44 employees, business associates, suppliers or customers, or (ii) for any
45 person wilfully to do any act or refrain from doing any act which
46 enables any such person to take such action. This subdivision shall not
47 apply to:

48 § 2. Subdivisions 1, 2 and 3 of section 296-a of the executive law, as
49 amended by chapter 8 of the laws of 2019, are amended to read as
50 follows:

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

53 a. In the case of applications for credit with respect to the
54 purchase, acquisition, construction, rehabilitation, repair or mainte-
55 nance of any housing accommodation, land or commercial space to discrim-
56 inate against any such applicant because of the race, creed, color,

1 national origin, sexual orientation, gender identity or expression,
2 military status, age, sex, height, weight, marital status, disability,
3 or familial status of such applicant or applicants or any member, stock-
4 holder, director, officer or employee of such applicant or applicants,
5 or of the prospective occupants or tenants of such housing accommo-
6 dation, land or commercial space, in the granting, withholding, extend-
7 ing or renewing, or in the fixing of the rates, terms or conditions of,
8 any such credit;

9 b. To discriminate in the granting, withholding, extending or renew-
10 ing, or in the fixing of the rates, terms or conditions of, any form of
11 credit, on the basis of race, creed, color, national origin, sexual
12 orientation, gender identity or expression, military status, age, sex,
13 height, weight, marital status, disability, or familial status;

14 c. To use any form of application for credit or use or make any record
15 or inquiry which expresses, directly or indirectly, any limitation,
16 specification, or discrimination as to race, creed, color, national
17 origin, sexual orientation, gender identity or expression, military
18 status, age, sex, height, weight, marital status, disability, or fami-
19 lial status;

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

23 e. To refuse to consider sources of an applicant's income or to
24 subject an applicant's income to discounting, in whole or in part,
25 because of an applicant's race, creed, color, national origin, sexual
26 orientation, gender identity or expression, military status, age, sex,
27 height, weight, marital status, childbearing potential, disability, or
28 familial status;

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

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

33 2. Without limiting the generality of subdivision one of this section,
34 it shall be considered discriminatory if, because of an applicant's or
35 class of applicants' race, creed, color, national origin, sexual orien-
36 tation, gender identity or expression, military status, age, sex,
37 height, weight, marital status or disability, or familial status, (i) an
38 applicant or class of applicants is denied credit in circumstances where
39 other applicants of like overall credit worthiness are granted credit,
40 or (ii) special requirements or conditions, such as requiring co-obli-
41 gors or reapplication upon marriage, are imposed upon an applicant or
42 class of applicants in circumstances where similar requirements or
43 conditions are not imposed upon other applicants of like overall credit
44 worthiness.

45 3. It shall not be considered discriminatory if credit differen-
46 tiations or decisions are based upon factually supportable, objective
47 differences in applicants' overall credit worthiness, which may include
48 reference to such factors as current income, assets and prior credit
49 history of such applicants, as well as reference to any other relevant
50 factually supportable data; provided, however, that no creditor shall
51 consider, in evaluating the credit worthiness of an applicant, aggregate
52 statistics or assumptions relating to race, creed, color, national
53 origin, sexual orientation, gender identity or expression, military
54 status, sex, height, weight, marital status or disability, or to the
55 likelihood of any group of persons bearing or rearing children, or for
56 that reason receiving diminished or interrupted income in the future.

§ 3. Paragraphs a, b and c of subdivision 2 and paragraph b of subdivision 3 of section 296-c of the executive law, as added by chapter 97 of the laws of 2014, are amended to read as follows:

a. refuse to hire or employ or to bar or to discharge from internship an intern or to discriminate against such intern in terms, conditions or privileges of employment as an intern because of the intern's age, race, creed, color, national origin, sexual orientation, military status, sex, height, weight, disability, predisposing genetic characteristics, marital status, or domestic violence victim status;

b. discriminate against an intern in receiving, classifying, disposing or otherwise acting upon applications for internships because of the intern's age, race, creed, color, national origin, sexual orientation, military status, sex, height, weight, disability, predisposing genetic characteristics, marital status, or domestic violence victim status;

c. print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment as an intern or to make any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, sexual orientation, military status, sex, height, weight, disability, predisposing genetic characteristics, marital status or domestic violence victim status, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification; provided, however, that neither this paragraph nor any provision of this chapter or other law shall be construed to prohibit the department of civil service or the department of personnel of any city containing more than one county from requesting information from applicants for civil service internships or examinations concerning any of the aforementioned characteristics, other than sexual orientation, for the purpose of conducting studies to identify and resolve possible problems in recruitment and testing of members of minority groups to insure the fairest possible and equal opportunities for employment in the civil service for all persons, regardless of age, race, creed, color, national origin, sexual orientation, military status, sex, height, weight, disability, predisposing genetic characteristics, marital status or domestic violence victim status;

b. subject an intern to unwelcome harassment based on age, sex, height, weight, race, creed, color, sexual orientation, military status, disability, predisposing genetic characteristics, marital status, domestic violence victim status, or national origin, where such harassment has the purpose or effect of unreasonably interfering with the intern's work performance by creating an intimidating, hostile, or offensive working environment.

§ 4. This act shall not annul, alter, affect or exempt any employer subject to the provisions of this act from complying with the laws, ordinances, rules or regulations of any locality, except to the extent that such laws, ordinances, rules or regulations are inconsistent with any provision of this act, but no such law, ordinance, rule or regulation shall be considered inconsistent if it affords equal or greater protection to the employee.

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.