

S. 2406--A

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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 unwell-  
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-

1 two years of age or older and the spouse of any such person, or for  
2 housing intended and operated for occupancy by at least one person  
3 fifty-five years of age or older per unit. In determining whether hous-  
4 ing is intended and operated for occupancy by persons fifty-five years  
5 of age 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 (b) It shall be an unlawful discriminatory practice for the owner,  
8 lessee, sub-lessee, or managing agent of, or other person having the  
9 right of ownership or possession of or the right to sell, rent or lease,  
10 land or commercial space:

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

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

24 (3) To print or circulate or cause to be printed or circulated any  
25 statement, advertisement or publication, or to use any form of applica-  
26 tion for the purchase, rental or lease of such land or commercial space  
27 or to make any record or inquiry in connection with the prospective  
28 purchase, rental or lease of such land or commercial space which  
29 expresses, directly or indirectly, any limitation, specification or  
30 discrimination as to race, creed, color, national origin, sexual orien-  
31 tation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disa-  
32 bility, marital status, or familial status; or any intent to make any  
33 such limitation, specification or discrimination.

34 (4) With respect to age and familial status, the provisions of this  
35 paragraph shall not apply to the restriction of the sale, rental or  
36 lease of land or commercial space exclusively to persons fifty-five  
37 years of age or older and the spouse of any such person, or to the  
38 restriction of the sale, rental or lease of land to be used for the  
39 construction, or location of housing accommodations exclusively for  
40 persons sixty-two years of age or older, or intended and operated for  
41 occupancy by at least one person fifty-five years of age or older per  
42 unit. In determining whether housing is intended and operated for occu-  
43 pancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c)  
44 (42 U.S.C. 3607(b) (2) (c)) of the federal Fair Housing Act of 1988, as  
45 amended, shall apply.

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

48 (1) To refuse to sell, rent or lease any housing accommodation, land  
49 or commercial space to any person or group of persons or to refuse to  
50 negotiate for the sale, rental or lease, of any housing accommodation,  
51 land or commercial space to any person or group of persons because of  
52 the race, creed, color, national origin, sexual orientation, GENDER  
53 IDENTITY OR EXPRESSION, military status, sex, age, disability, marital  
54 status, or familial status of such person or persons, or to represent  
55 that any housing accommodation, land or commercial space is not avail-  
56 able 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

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

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

13 4. For purposes of this section:

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

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

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

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

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

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

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

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

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

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

49 (c) in the case of any hate crime, as defined in section 485.05 of the  
50 penal law, specifies, as applicable, that the defendant or defendants  
51 intentionally selected the person against whom the offense was committed  
52 or intended to be committed; or intentionally committed the act or acts  
53 constituting the offense, in whole or in substantial part because of a  
54 belief or perception regarding the race, color, national origin, ances-  
55 try, gender, GENDER IDENTITY OR EXPRESSION, religion, religious prac-  
56 tice, 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.