

S. 2406

A. 5710

2009-2010 Regular Sessions

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

February 19, 2009

IN SENATE -- Introduced by Sens. DUANE, BRESLIN, KRUEGER, PERKINS, SAMPSON, SCHNEIDERMAN, SERRANO, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

IN ASSEMBLY -- Introduced by M. of A. GOTTFRIED, GLICK, O'DONNELL, BRENNAN, CANESTRARI, COOK, ESPAILLAT, FIELDS, HOYT, ORTIZ, PERALTA, HEVESI, 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

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

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

SA

LBD00798-01-9

menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.

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

In so doing, the legislature makes clear its action is not intended to promote any particular attitude, course of conduct or way of life. Rather its purpose is to ensure that individuals who live in our free society 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 106 of the laws of 2003, 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 or marital status 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 or marital status, 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 34 to read as follows:

34. 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

1 origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military
2 status, sex, disability or marital status and make recommendations to
3 the division for the development of policies and procedures in general
4 and in specific instances. The advisory councils also shall disseminate
5 information about the division's activities to organizations and indi-
6 viduals in their localities. Such advisory councils shall be composed of
7 representative citizens, serving without pay, but with reimbursement for
8 actual and necessary traveling expenses; and the division may make
9 provision for technical and clerical assistance to such councils and for
10 the expenses of such assistance.

11 9. To develop human rights plans and policies for the state and assist
12 in their execution and to make investigations and studies appropriate to
13 effectuate this article and to issue such publications and such results
14 of investigations and research as in its judgement will tend to inform
15 persons of the rights assured and remedies provided under this article,
16 to promote good-will and minimize or eliminate discrimination because of
17 age, race, creed, color, national origin, sexual orientation, GENDER
18 IDENTITY OR EXPRESSION, military status, sex, disability or marital
19 status.

20 S 5. Paragraphs (a), (b), (c) and (d) of subdivision 1 of section 296
21 of the executive law, as amended by chapter 75 of the laws of 2005, are
22 amended to read as follows:

23 (a) For an employer or licensing agency, because of the age, race,
24 creed, color, national origin, sexual orientation, GENDER IDENTITY OR
25 EXPRESSION, military status, sex, disability, predisposing genetic char-
26 acteristics, or marital status of any individual, to refuse to hire or
27 employ or to bar or to discharge from employment such individual or to
28 discriminate against such individual in compensation or in terms, condi-
29 tions or privileges of employment.

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

36 (c) For a labor organization, because of the age, race, creed, color,
37 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
38 military status, sex, disability, predisposing genetic characteristics,
39 or marital status of any individual, to exclude or to expel from its
40 membership such individual or to discriminate in any way against any of
41 its members or against any employer or any individual employed by an
42 employer.

43 (d) For any employer or employment agency to print or circulate or
44 cause to be printed or circulated any statement, advertisement or publi-
45 cation, or to use any form of application for employment or to make any
46 inquiry in connection with prospective employment, which expresses
47 directly or indirectly, any limitation, specification or discrimination
48 as to age, race, creed, color, national origin, sexual orientation,
49 GENDER IDENTITY OR EXPRESSION, military status, sex, disability, predis-
50 posing genetic characteristics, or marital status, or any intent to make
51 any such limitation, specification or discrimination, unless based upon
52 a bona fide occupational qualification; provided, however, that neither
53 this paragraph nor any provision of this chapter or other law shall be
54 construed to prohibit the department of civil service or the department
55 of personnel of any city containing more than one county from requesting
56 information from applicants for civil service examinations concerning

any of the aforementioned characteristics, other than sexual orientation OR GENDER IDENTITY OR EXPRESSION, 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, GENDER IDENTITY OR EXPRESSION, military status, sex, disability, predisposing genetic characteristics, or marital status.

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

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

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

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program 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 or marital status, or any intention to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

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

(a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color, national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, [or] disability or marital status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, including the extension of credit, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, [or] disability or marital status, or that the patronage or custom thereat of any person of or purporting to be of any particular race, creed, color, national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex or marital status, or having a disability is unwelcome, objectionable or not acceptable, desired or solicited.

S 8. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section 296 of the executive law, paragraphs (a), (b) and (c) as amended and

1 paragraph (c-1) as added by chapter 106 of the laws of 2003, are amended
2 to read as follows:

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

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

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

25 (c-1) To print or circulate or cause to be printed or circulated any
26 statement, advertisement or publication, or to use any form of applica-
27 tion for the purchase, rental or lease of such housing accommodation or
28 to make any record or inquiry in connection with the prospective
29 purchase, rental or lease of such a housing accommodation which
30 expresses, directly or indirectly, any limitation, specification or
31 discrimination as to race, creed, color, national origin, sexual orien-
32 tation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disa-
33 bility, marital status, or familial status, or any intent to make any
34 such limitation, specification or discrimination.

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

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

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

54 4. It shall be an unlawful discriminatory practice for an education
55 corporation or association which holds itself out to the public to be
56 non-sectarian and exempt from taxation pursuant to the provisions of

1 article four of the real property tax law to deny the use of its facili-
2 ties to any person otherwise qualified, or to permit the harassment of
3 any student or applicant, by reason of his race, color, religion, disa-
4 bility, national origin, sexual orientation, GENDER IDENTITY OR
5 EXPRESSION, military status, sex, age or marital status, except that any
6 such institution which establishes or maintains a policy of educating
7 persons of one sex exclusively may admit students of only one sex.

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

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

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

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

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

37 The provisions of this paragraph (a) shall not apply (1) to the rental
38 of a housing accommodation in a building which contains housing accommo-
39 dations for not more than two families living independently of each
40 other, if the owner resides in one of such housing accommodations, (2)
41 to the restriction of the rental of all rooms in a housing accommodation
42 to individuals of the same sex or (3) to the rental of a room or rooms
43 in a housing accommodation, if such rental is by the occupant of the
44 housing accommodation or by the owner of the housing accommodation and
45 the owner resides in such housing accommodation or (4) solely with
46 respect to age and familial status to the restriction of the sale,
47 rental or lease of housing accommodations exclusively to persons sixty-
48 two years of age or older and the spouse of any such person, or for
49 housing intended and operated for occupancy by at least one person
50 fifty-five years of age or older per unit. In determining whether hous-
51 ing is intended and operated for occupancy by persons fifty-five years
52 of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the
53 federal Fair Housing Act of 1988, as amended, shall apply.

54 (b) It shall be an unlawful discriminatory practice for the owner,
55 lessee, sub-lessee, or managing agent of, or other person having the

1 right of ownership or possession of or the right to sell, rent or lease,
2 land or commercial space:

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

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

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

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

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

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

55 (2) To print or circulate or cause to be printed or circulated any
56 statement, advertisement or publication, or to use any form of applica-

tion for the purchase, rental or lease of any housing accommodation, land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, age, disability, marital status, or familial status; or any intent to make any such limitation, specification or discrimination.

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

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

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

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

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

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

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

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

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

27 (a) Boycotts connected with labor disputes; or

28 (b) Boycotts to protest unlawful discriminatory practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (a) It is hereby declared to be the policy of the state that the Amer-
53 ican ideal of equality of opportunity requires that students, otherwise
54 qualified, be admitted to educational institutions and be given access
55 to all the educational programs and courses operated or provided by such
56 institutions without regard to race, color, sex, religion, creed, mari-

1 tal status, age, sexual orientation as defined in section two hundred
2 ninety-two of the executive law, GENDER IDENTITY OR EXPRESSION AS
3 DEFINED IN SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE LAW, or
4 national origin, except that, with regard to religious or denominational
5 educational institutions, students, otherwise qualified, shall have the
6 equal opportunity to attend therein without discrimination because of
7 race, color, sex, marital status, age, sexual orientation as defined in
8 section two hundred ninety-two of the executive law, GENDER IDENTITY OR
9 EXPRESSION AS DEFINED IN SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE
10 LAW, or national origin. It is a fundamental American right for members
11 of various religious faiths to establish and maintain educational insti-
12 tutions exclusively or primarily for students of their own religious
13 faith or to effectuate the religious principles in furtherance of which
14 they are maintained. Nothing herein contained shall impair or abridge
15 that right.

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

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

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

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

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

42 (d) With respect to any individual who withdraws from attendance to
43 serve on active duty in the armed forces of the United States in time of
44 war, including any individual who withdrew from attendance on or after
45 August second, nineteen hundred ninety to serve on active duty in the
46 armed forces of the United States in the Persian Gulf conflict: (i) to
47 deny or limit the readmission of such individual to such institution or
48 to any educational program or course operated or provided by such insti-
49 tution because of such withdrawal from attendance or because of the
50 failure to complete any educational program or course due to such with-
51 drawal; (ii) to impose any academic penalty on such person because of
52 such withdrawal or because of the failure to complete any educational
53 program or course due to such withdrawal; (iii) to reduce or eliminate
54 any financial aid award granted to such individual which could not be
55 used, in whole or part, because of such withdrawal or because of the
56 failure to complete any educational program or course due to such with-

drawal; or (iv) to fail to provide a credit or refund of tuition and fees paid by such individual for any semester, term or quarter not completed because of such withdrawal or because of the failure to complete any program or course due to such withdrawal.

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

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

S 485.00 Legislative findings.

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

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

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

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

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

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

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

4. For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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