

4226--A

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I N A S S E M B L Y

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Introduced by M. of A. GOTTFRIED, GLICK, O'DONNELL, BRENNAN, BRONSON, COOK, ORTIZ, HEVESI, TITONE, KELLNER, SCHIMEL, KAVANAGH, CAHILL, ENGLEBRIGHT, DINOWITZ, PAULIN, RYAN, ABINANTI, MOYA, SEPULVEDA, MOSLEY, ARROYO, ESPINAL, ROBERTS -- Multi-Sponsored by -- M. of A. AUBRY, BENEDETTO, BOYLAND, BUCHWALD, FAHY, FARRELL, GUNTHER, HOOPER, JACOBS, JAFFEE, LAVINE, LIFTON, LUPARDO, MAGNARELLI, MAISEL, MARKEY, McDONALD, MILLMAN, OTIS, PEOPLES-STOKES, PERRY, PRETLOW, QUART, RAMOS, RIVERA, ROBINSON, ROSENTHAL, SCARBOROUGH, SIMOTAS, SOLAGES, STECK, SWEENEY, THIELE, WEISENBERG, WRIGHT -- read once and referred to the Committee on Governmental Operations -- reported and referred to the Committee on Codes -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, 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:

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.

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

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

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

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

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

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

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

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

40 35. (A) THE TERM "GENDER IDENTITY OR EXPRESSION" MEANS HAVING OR BEING  
41 PERCEIVED AS HAVING A GENDER IDENTITY, SELF-IMAGE, APPEARANCE, BEHAVIOR  
42 OR EXPRESSION WHETHER OR NOT THAT GENDER IDENTITY, SELF-IMAGE, APPEAR-  
43 ANCE, BEHAVIOR OR EXPRESSION IS DIFFERENT FROM THAT TRADITIONALLY ASSO-  
44 CIATED WITH THE SEX ASSIGNED TO THAT PERSON AT BIRTH.

45 (B) AS USED IN THIS ARTICLE AND IN SECTION FORTY-C OF THE CIVIL RIGHTS  
46 LAW AND SECTION THREE HUNDRED THIRTEEN OF THE EDUCATION LAW, "GENDER  
47 IDENTITY OR EXPRESSION" SHALL NOT BE CONSTRUED TO CHANGE THE DEFINITION  
48 OF ANY CRIMINAL ACT UNDER EXISTING STATE PENAL LAW, INCLUDING ANY ACT  
49 THAT MAY OCCUR IN A GENDER SEGREGATED FACILITY. THE PROVISIONS OF THIS  
50 CHAPTER RELATING TO GENDER IDENTITY AND EXPRESSION SHALL NOT BE USED AS  
51 A CRIMINAL DEFENSE IN A CRIMINAL PROCEEDING.

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

55 8. To create such advisory councils, local, regional or state-wide, as  
56 in its judgment will aid in effectuating the purposes of this article

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

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

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

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

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

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

48 (d) For any employer or employment agency to print or circulate or  
49 cause to be printed or circulated any statement, advertisement or publi-  
50 cation, or to use any form of application for employment or to make any  
51 inquiry in connection with prospective employment, which expresses  
52 directly or indirectly, any limitation, specification or discrimination  
53 as to age, race, creed, color, national origin, sexual orientation,  
54 GENDER IDENTITY OR EXPRESSION, military status, sex, disability, predis-  
55 posing genetic characteristics, or marital status, or any intent to make  
56 any such limitation, specification or discrimination, unless based upon

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

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

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

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

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

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

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

1 military status, sex or marital status, or having a disability is unwell-  
2 come, objectionable or not acceptable, desired or solicited.

3 S 8. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section  
4 296 of the executive law, paragraphs (a), (b) and (c) as amended and  
5 paragraph (c-1) as added by chapter 106 of the laws of 2003, are amended  
6 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the  
2 federal Fair Housing Act of 1988, as amended, shall apply.

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

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

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

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

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

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

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

1 OR EXPRESSION, military status, sex, age, disability, marital status, or  
2 familial status of such person or persons.

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

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

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

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

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

51 (g) It shall be an unlawful discriminatory practice for any person  
52 offering or providing housing accommodations, land or commercial space  
53 as described in paragraphs (a), (b), and (c) of this subdivision to make  
54 or cause to be made any written or oral inquiry or record concerning  
55 membership of any person in the state organized militia in relation to  
56 the purchase, rental or lease of such housing accommodation, land, or



1 commercial space, provided, however, that nothing in this subdivision  
2 shall prohibit a member of the state organized militia from voluntarily  
3 disclosing such membership.

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

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

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

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

30 (a) Boycotts connected with labor disputes; or

31 (b) Boycotts to protest unlawful discriminatory practices.

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

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

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

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

53 c. To use any form of application for credit or use or make any record  
54 or inquiry which expresses, directly or indirectly, any limitation,  
55 specification, or discrimination as to race, creed, color, national

1 origin, sexual orientation, GENDER IDENTITY OR EXPRESSION, military  
2 status, age, sex, marital status, disability, or familial status;

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

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

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

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

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

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

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

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

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

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

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

1 corporation or institution, or by the state or any agency or subdivision  
2 of the state.

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

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

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

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

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

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

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

52 (d) With respect to any individual who withdraws from attendance to  
53 serve on active duty in the armed forces of the United States in time of  
54 war, including any individual who withdrew from attendance on or after  
55 August second, nineteen hundred ninety to serve on active duty in the  
56 armed forces of the United States in the Persian Gulf conflict: (i) to

1 deny or limit the readmission of such individual to such institution or  
2 to any educational program or course operated or provided by such insti-  
3 tution because of such withdrawal from attendance or because of the  
4 failure to complete any educational program or course due to such with-  
5 drawal; (ii) to impose any academic penalty on such person because of  
6 such withdrawal or because of the failure to complete any educational  
7 program or course due to such withdrawal; (iii) to reduce or eliminate  
8 any financial aid award granted to such individual which could not be  
9 used, in whole or part, because of such withdrawal or because of the  
10 failure to complete any educational program or course due to such with-  
11 drawal; or (iv) to fail to provide a credit or refund of tuition and  
12 fees paid by such individual for any semester, term or quarter not  
13 completed because of such withdrawal or because of the failure to  
14 complete any program or course due to such withdrawal.

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

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

25 S 485.00 Legislative findings.

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

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

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

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

55 (a) intentionally selects the person against whom the offense is  
56 committed or intended to be committed in whole or in substantial part

1 because of a belief or perception regarding the race, color, national  
2 origin, ancestry, gender, GENDER IDENTITY OR EXPRESSION, religion, reli-  
3 gious practice, age, disability or sexual orientation of a person,  
4 regardless of whether the belief or perception is correct, or

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

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

17 4. For purposes of this section:

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

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

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

26 (2) AS USED IN THIS SECTION "GENDER IDENTITY OR EXPRESSION" SHALL NOT  
27 BE CONSTRUED TO CHANGE THE DEFINITION OF ANY CRIMINAL ACT UNDER EXISTING  
28 STATE PENAL LAW, INCLUDING ANY ACT THAT MAY OCCUR IN A GENDER SEGREGATED  
29 FACILITY. THE PROVISIONS OF THIS ACT RELATING TO GENDER IDENTITY AND  
30 EXPRESSION SHALL NOT BE USED AS A CRIMINAL DEFENSE IN A CRIMINAL  
31 PROCEEDING.

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

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

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

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

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

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

1 (B) AS USED IN THIS SECTION, "GENDER IDENTITY OR EXPRESSION" SHALL NOT  
2 BE CONSTRUED TO CHANGE THE DEFINITION OF ANY CRIMINAL ACT UNDER EXISTING  
3 STATE PENAL LAW, INCLUDING ANY ACT THAT MAY OCCUR IN A GENDER SEGREGATED  
4 FACILITY. THE PROVISIONS OF THIS ACT RELATING TO GENDER IDENTITY AND  
5 EXPRESSION SHALL NOT BE USED AS A CRIMINAL DEFENSE IN A CRIMINAL  
6 PROCEEDING.

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

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

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