

195--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. SQUADRON, ADAMS, ADDABBO, AVELLA, BRESLIN, CARLUCCI, DILAN, ESPAILLAT, GIANARIS, GIPSON, HASSELL-THOMPSON, HOYLMAN, KRUEGER, LATIMER, MONTGOMERY, O'BRIEN, PARKER, PERALTA, PERKINS, RIVERA, SAMPSON, SAVINO, SERRANO, STAVISKY, TKACZYK -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, the civil rights law and the education law, in relation to prohibiting discrimination based on gender identity or expression; and to amend the penal law and the criminal procedure law, in relation to including offenses regarding gender identity or expression within the list of offenses subject to treatment as hate crimes

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings and intent. The legislature reaffirms
2 that the state has the responsibility to act to assure that every indi-
3 vidual within this state is afforded an equal opportunity to enjoy a
4 full and productive life, and that the failure to provide such equal
5 opportunity, whether because of discrimination, prejudice, intolerance
6 or inadequate education, training, housing or health care not only
7 threatens the rights and proper privileges of its inhabitants, but
8 menaces the institutions and foundation of a free democratic state and
9 threatens the peace, order, health, safety and general welfare of the
10 state and its inhabitants.

11 The legislature further finds that many residents of this state have
12 encountered prejudice on account of their gender identity or expression,
13 and that this prejudice has severely limited or actually prevented
14 access to employment, housing and other basic necessities of life, lead-

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

LBD01192-02-3

1 ing to deprivation and suffering. The legislature further recognizes
2 that this prejudice has fostered a general climate of hostility and
3 distrust, leading in some instances to physical violence against those
4 perceived to live in a gender identity or expression which is different
5 from that traditionally associated with the sex assigned to that person
6 at birth.

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

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

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

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

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

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

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

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

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

51 8. To create such advisory councils, local, regional or state-wide, as
52 in its judgment will aid in effectuating the purposes of this article
53 and of section eleven of article one of the constitution of this state,
54 and the division may empower them to study the problems of discrimi-
55 nation in all or specific fields of human relationships or in specific
56 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, paragraph (a) as amended by chapter 80 of the laws
22 of 2009 and paragraphs (b), (c), and (d) as amended by chapter 75 of the
23 laws of 2005, are amended to read as follows:

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

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

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

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

1 information from applicants for civil service examinations concerning
2 any of the aforementioned characteristics, other than sexual orientation
3 OR GENDER IDENTITY OR EXPRESSION, for the purpose of conducting studies
4 to identify and resolve possible problems in recruitment and testing of
5 members of minority groups to insure the fairest possible and equal
6 opportunities for employment in the civil service for all persons,
7 regardless of age, race, creed, color, national origin, sexual orien-
8 tation, GENDER IDENTITY OR EXPRESSION, military status, sex, disability,
9 predisposing genetic characteristics, or marital status.

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

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

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

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

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

36 (a) It shall be an unlawful discriminatory practice for any person,
37 being the owner, lessee, proprietor, manager, superintendent, agent or
38 employee of any place of public accommodation, resort or amusement,
39 because of the race, creed, color, national origin, sexual orientation,
40 GENDER IDENTITY OR EXPRESSION, military status, sex, [or] disability or
41 marital status of any person, directly or indirectly, to refuse, with-
42 hold from or deny to such person any of the accommodations, advantages,
43 facilities or privileges thereof, including the extension of credit, or,
44 directly or indirectly, to publish, circulate, issue, display, post or
45 mail any written or printed communication, notice or advertisement, to
46 the effect that any of the accommodations, advantages, facilities and
47 privileges of any such place shall be refused, withheld from or denied
48 to any person on account of race, creed, color, national origin, sexual
49 orientation, GENDER IDENTITY OR EXPRESSION, military status, sex, [or]
50 disability or marital status, or that the patronage or custom thereat of
51 any person of or purporting to be of any particular race, creed, color,
52 national origin, sexual orientation, GENDER IDENTITY OR EXPRESSION,
53 military status, sex or marital status, or having a disability is unwel-
54 come, objectionable or not acceptable, desired or solicited.

55 S 8. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section
56 296 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-

1 tion for the purchase, rental or lease of any housing accommodation,
2 land or commercial space or to make any record or inquiry in connection
3 with the prospective purchase, rental or lease of any housing accommo-
4 dation, land or commercial space which expresses, directly or indirect-
5 ly, any limitation, specification, or discrimination as to race, creed,
6 color, national origin, sexual orientation, GENDER IDENTITY OR
7 EXPRESSION, military status, sex, age, disability, marital status, or
8 familial status; or any intent to make any such limitation, specifica-
9 tion or discrimination.

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

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

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

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

47 (g) It shall be an unlawful discriminatory practice for any person
48 offering or providing housing accommodations, land or commercial space
49 as described in paragraphs (a), (b), and (c) of this subdivision to make
50 or cause to be made any written or oral inquiry or record concerning
51 membership of any person in the state organized militia in relation to
52 the purchase, rental or lease of such housing accommodation, land, or
53 commercial space, provided, however, that nothing in this subdivision
54 shall prohibit a member of the state organized militia from voluntarily
55 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 196 of the laws of 2010, is amended to read as follows:

17 13. It shall be an unlawful discriminatory practice (i) for any person
18 to boycott or blacklist, or to refuse to buy from, sell to or trade
19 with, or otherwise discriminate against any person, because of the race,
20 creed, color, national origin, sexual orientation, GENDER IDENTITY OR
21 EXPRESSION, military status, sex, or disability of such person, or of
22 such person's partners, members, stockholders, directors, officers,
23 managers, superintendents, agents, employees, business associates,
24 suppliers or customers, or (ii) for any person wilfully to do any act or
25 refrain from doing any act which enables any such person to take such
26 action. This subdivision 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. Paragraph (b) of subdivision 2 of section 296-b of the executive
37 law, as added by chapter 481 of the laws of 2010, is amended to read as
38 follows:

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

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

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

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

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

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

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

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

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

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

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

50 (d) With respect to any individual who withdraws from attendance to
51 serve on active duty in the armed forces of the United States in time of
52 war, including any individual who withdrew from attendance on or after
53 August second, nineteen hundred ninety to serve on active duty in the
54 armed forces of the United States in the Persian Gulf conflict: (i) to
55 deny or limit the readmission of such individual to such institution or
56 to any educational program or course operated or provided by such insti-

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

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

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

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

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

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

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

53 (a) intentionally selects the person against whom the offense is
54 committed or intended to be committed in whole or in substantial part
55 because of a belief or perception regarding the race, color, national
56 origin, ancestry, gender, GENDER IDENTITY OR EXPRESSION, religion, reli-

1 religious practice, age, disability or sexual orientation of a person,
2 regardless of whether the belief or perception is correct, or

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

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

15 4. For purposes of this section:

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

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

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

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

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

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

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

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

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

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

54 (B) AS USED IN THIS SECTION, "GENDER IDENTITY OR EXPRESSION" SHALL NOT
55 BE CONSTRUED TO CHANGE THE DEFINITION OF ANY CRIMINAL ACT UNDER EXISTING
56 STATE PENAL LAW, INCLUDING ANY ACT THAT MAY OCCUR IN A GENDER SEGREGATED

1 FACILITY. THE PROVISIONS OF THIS ACT RELATING TO GENDER IDENTITY AND
2 EXPRESSION SHALL NOT BE USED AS A CRIMINAL DEFENSE IN A CRIMINAL
3 PROCEEDING.

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

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

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