

STATE OF NEW YORK

8316--A

2021-2022 Regular Sessions

IN ASSEMBLY

October 20, 2021

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to prohibiting discrimination on the basis of a person's height or weight in opportunities of employment, housing, and access to public accommodations

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

1 Section 1. Paragraphs (a), (b), (c), (d) and (h) of subdivision 1,
2 paragraphs (b), (c) and (d) of subdivision 1-a, paragraphs (a) and (b)
3 of subdivision 2, paragraphs (a), (b), (c) and (c-1) of subdivision 2-a,
4 subdivisions 3-b and 4, subparagraphs 1, 2 and 3 of paragraph (a),
5 subparagraphs 1, 2 and 3 of paragraph (b), subparagraphs 1 and 2 of
6 paragraph (c) and paragraph (d) of subdivision 5, paragraph (a) of
7 subdivision 9 and subdivision 13 of section 296 of the executive law,
8 paragraph (a) of subdivision 1 as separately amended by chapters 8 and
9 176 of the laws of 2019, paragraphs (b), (c) and (d) of subdivision 1 as
10 amended by chapter 8 of the laws of 2019 and paragraph (h) of subdivi-
11 sion 1 as amended by chapter 161 of the laws of 2019, paragraphs (b),
12 (c) and (d) of subdivision 1-a, paragraph (a) of subdivision 2, subdivi-
13 sion 3-b, subparagraphs 1, 2 and 3 of paragraph (b) of subdivision 5,
14 paragraph (a) of subdivision 9 and subdivision 13 as amended by chapter
15 8 of the laws of 2019, paragraph (b) of subdivision 2 as amended by
16 chapter 166 of the laws of 2000, paragraphs (a), (b), (c) and (c-1) of
17 subdivision 2-a as amended by section 3 of part T of chapter 56 of the
18 laws of 2019, subparagraphs 1 and 2 of paragraph (c) of subdivision 5 as
19 amended by section 5 and paragraph (d) of subdivision 5 as amended by
20 section 6 of part T of chapter 56 of the laws of 2019, subdivision 4 as
21 separately amended by chapters 8 and 116 of the laws of 2019, subpara-

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

LBD13135-04-2

graphs 1, 2 and 3 of paragraph (a) of subdivision 5 as amended by chapter 300 of the laws of 2021, are amended to read as follows:

(a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, height, weight, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

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

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

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

(h) For an employer, licensing agency, employment agency or labor organization to subject any individual to harassment because of an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, height, weight, disability, predisposing genetic characteristics, familial status, marital status, domestic violence victim status, or because the individual has opposed any practices forbidden under this article or because the individual has filed a complaint, testified or assisted in any proceeding under this article, regardless of whether such harassment would be

1 considered severe or pervasive under precedent applied to harassment
2 claims. Such harassment is an unlawful discriminatory practice when it
3 subjects an individual to inferior terms, conditions or privileges of
4 employment because of the individual's membership in one or more of
5 these protected categories. The fact that such individual did not make a
6 complaint about the harassment to such employer, licensing agency,
7 employment agency or labor organization shall not be determinative of
8 whether such employer, licensing agency, employment agency or labor
9 organization shall be liable. Nothing in this section shall imply that
10 an employee must demonstrate the existence of an individual to whom the
11 employee's treatment must be compared. It shall be an affirmative
12 defense to liability under this subdivision that the harassing conduct
13 does not rise above the level of what a reasonable victim of discrimi-
14 nation with the same protected characteristic or characteristics would
15 consider petty slights or trivial inconveniences.

16 (b) To deny to or withhold from any person because of race, creed,
17 color, national origin, sexual orientation, gender identity or
18 expression, military status, sex, height, weight, age, disability, fami-
19 lial status, or marital status, the right to be admitted to or partic-
20 ipate in a guidance program, an apprenticeship training program, on-the-
21 job training program, executive training program, or other occupational
22 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, height, weight, age, disability, familial status
28 or marital status;

29 (d) 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 such programs or to make any inquiry in connection with such
32 program which expresses, directly or indirectly, any limitation, spec-
33 ification or discrimination as to race, creed, color, national origin,
34 sexual orientation, gender identity or expression, military status, sex,
35 height, weight, age, disability, familial status or marital status, or
36 any intention to make any such limitation, specification or discrimi-
37 nation, unless based on a bona fide occupational qualification.

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

1 marital status, or having a disability is unwelcome, objectionable or
2 not acceptable, desired or solicited.

3 (b) Nothing in this subdivision shall be construed to prevent the
4 barring of any person, because of the sex of such person, from places of
5 public accommodation, resort or amusement if the division grants an
6 exemption based on bona fide considerations of public policy; nor shall
7 this subdivision apply to the rental of rooms in a housing accommodation
8 which restricts such rental to individuals of one sex. Nothing in this
9 subdivision shall be construed to prevent the barring of any person,
10 because of height or weight of such person, from places of amusement for
11 purposes of compliance with any established state, federal, or amusement
12 industry safety standard.

13 (a) To refuse to sell, rent or lease or otherwise to deny to or with-
14 hold from any person or group of persons such housing accommodations
15 because of the race, creed, color, disability, national origin, sexual
16 orientation, gender identity or expression, military status, age, sex,
17 height, weight, marital status, lawful source of income or familial
18 status of such person or persons, or to represent that any housing
19 accommodation or land is not available for inspection, sale, rental or
20 lease when in fact it is so available.

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

27 (c) To cause to be made any written or oral inquiry or record concern-
28 ing the race, creed, color, disability, national origin, sexual orien-
29 tation, gender identity or expression, membership in the reserve armed
30 forces of the United States or in the organized militia of the state,
31 age, sex, height, weight, marital status, lawful source of income or
32 familial status of a person seeking to rent or lease any publicly-as-
33 sisted housing accommodation; provided, however, that nothing in this
34 subdivision shall prohibit a member of the reserve armed forces of the
35 United States or in the organized militia of the state from voluntarily
36 disclosing such membership.

37 (c-1) To print or circulate or cause to be printed or circulated any
38 statement, advertisement or publication, or to use any form of applica-
39 tion for the purchase, rental or lease of such housing accommodation or
40 to make any record or inquiry in connection with the prospective
41 purchase, rental or lease of such a housing accommodation which
42 expresses, directly or indirectly, any limitation, specification or
43 discrimination as to race, creed, color, national origin, sexual orien-
44 tation, gender identity or expression, military status, sex, height,
45 weight, age, disability, marital status, lawful source of income or
46 familial status, or any intent to make any such limitation, specifica-
47 tion or discrimination.

48 3-b. It shall be an unlawful discriminatory practice for any real
49 estate broker, real estate salesperson or employee or agent thereof or
50 any other individual, corporation, partnership or organization for the
51 purpose of inducing a real estate transaction from which any such person
52 or any of its stockholders or members may benefit financially, to repre-
53 sent that a change has occurred or will or may occur in the composition
54 with respect to race, creed, color, national origin, sexual orientation,
55 gender identity or expression, military status, sex, height, weight,
56 disability, marital status, or familial status of the owners or occu-

1 pants in the block, neighborhood or area in which the real property is
2 located, and to represent, directly or indirectly, that this change will
3 or may result in undesirable consequences in the block, neighborhood or
4 area in which the real property is located, including but not limited to
5 the lowering of property values, an increase in criminal or anti-social
6 behavior, or a decline in the quality of schools or other facilities.

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

15 (1) To refuse to sell, rent, lease or otherwise to deny to or withhold
16 from any person or group of persons such a housing accommodation because
17 of the race, creed, color, national origin, sexual orientation, gender
18 identity or expression, military status, sex, height, weight, age, disa-
19 bility, marital status, lawful source of income or familial status of
20 such person or persons, or to represent that any housing accommodation
21 or land is not available for inspection, sale, rental or lease when in
22 fact it is so available.

23 (2) To discriminate against any person because of race, creed, color,
24 national origin, sexual orientation, gender identity or expression,
25 military status, sex, height, weight, age, disability, marital status,
26 lawful source of income or familial status in the terms, conditions or
27 privileges of the sale, rental or lease of any such housing accommo-
28 dation or in the furnishing of facilities or services in connection
29 therewith.

30 (3) To print or circulate or cause to be printed or circulated any
31 statement, advertisement or publication, or to use any form of applica-
32 tion for the purchase, rental or lease of such housing accommodation or
33 to make any record or inquiry in connection with the prospective
34 purchase, rental or lease of such a housing accommodation which
35 expresses, directly or indirectly, any limitation, specification or
36 discrimination as to race, creed, color, national origin, sexual orien-
37 tation, gender identity or expression, military status, sex, height,
38 weight, age, disability, marital status, lawful source of income or
39 familial status, or any intent to make any such limitation, specifica-
40 tion or discrimination.

41 (1) To refuse to sell, rent, lease or otherwise deny to or withhold
42 from any person or group of persons land or commercial space because of
43 the race, creed, color, national origin, sexual orientation, gender
44 identity or expression, military status, sex, height, weight, age, disa-
45 bility, marital status, or familial status of such person or persons, or
46 to represent that any housing accommodation or land is not available for
47 inspection, sale, rental or lease when in fact it is so available;

48 (2) To discriminate against any person because of race, creed, color,
49 national origin, sexual orientation, gender identity or expression,
50 military status, sex, height, weight, age, disability, marital status,
51 or familial status in the terms, conditions or privileges of the sale,
52 rental or lease of any such land or commercial space; or in the furnish-
53 ing of facilities or services in connection therewith;

54 (3) To print or circulate or cause to be printed or circulated any
55 statement, advertisement or publication, or to use any form of applica-
56 tion for the purchase, rental or lease of such land or commercial space

1 or to make any record or inquiry in connection with the prospective
2 purchase, rental or lease of such land or commercial space which
3 expresses, directly or indirectly, any limitation, specification or
4 discrimination as to race, creed, color, national origin, sexual orien-
5 tation, gender identity or expression, military status, sex, height,
6 weight, age, disability, marital status, or familial status; or any
7 intent to make any such limitation, specification or discrimination.

8 (1) To refuse to sell, rent or lease any housing accommodation, land
9 or commercial space to any person or group of persons or to refuse to
10 negotiate for the sale, rental or lease, of any housing accommodation,
11 land or commercial space to any person or group of persons because of
12 the race, creed, color, national origin, sexual orientation, gender
13 identity or expression, military status, sex, height, weight, age, disa-
14 bility, marital status, lawful source of income or familial status of
15 such person or persons, or to represent that any housing accommodation,
16 land or commercial space is not available for inspection, sale, rental
17 or lease when in fact it is so available, or otherwise to deny or with-
18 hold any housing accommodation, land or commercial space or any facili-
19 ties of any housing accommodation, land or commercial space from any
20 person or group of persons because of the race, creed, color, national
21 origin, sexual orientation, gender identity or expression, military
22 status, sex, height, weight, age, disability, marital status, lawful
23 source of income or familial status of such person or persons.

24 (2) To print or circulate or cause to be printed or circulated any
25 statement, advertisement or publication, or to use any form of applica-
26 tion for the purchase, rental or lease of any housing accommodation,
27 land or commercial space or to make any record or inquiry in connection
28 with the prospective purchase, rental or lease of any housing accommo-
29 dation, land or commercial space which expresses, directly or indirect-
30 ly, any limitation, specification, or discrimination as to race, creed,
31 color, national origin, sexual orientation, gender identity or
32 expression, military status, sex, height, weight, age, disability, mari-
33 tal status, lawful source of income or familial status; or any intent to
34 make any such limitation, specification or discrimination.

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

43 (a) It shall be an unlawful discriminatory practice for any fire
44 department or fire company therein, through any member or members there-
45 of, officers, board of fire commissioners or other body or office having
46 power of appointment of volunteer firefighters, directly or indirectly,
47 by ritualistic practice, constitutional or by-law prescription, by tacit
48 agreement among its members, or otherwise, to deny to any individual
49 membership in any volunteer fire department or fire company therein, or
50 to expel or discriminate against any volunteer member of a fire depart-
51 ment or fire company therein, because of the race, creed, color,
52 national origin, sexual orientation, gender identity or expression,
53 military status, sex, height, weight, marital status, or familial
54 status, of such individual.

55 13. It shall be an unlawful discriminatory practice (i) for any person
56 to boycott or blacklist, or to refuse to buy from, sell to or trade

1 with, or otherwise discriminate against any person, because of the race,
2 creed, color, national origin, sexual orientation, gender identity or
3 expression, military status, sex, height, weight, disability, or fami-
4 lial status, of such person, or of such person's partners, members,
5 stockholders, directors, officers, managers, superintendents, agents,
6 employees, business associates, suppliers or customers, or (ii) for any
7 person wilfully to do any act or refrain from doing any act which
8 enables any such person to take such action. This subdivision shall not
9 apply to:

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

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

15 a. In the case of applications for credit with respect to the
16 purchase, acquisition, construction, rehabilitation, repair or mainte-
17 nance of any housing accommodation, land or commercial space to discrim-
18 inate against any such applicant because of the race, creed, color,
19 national origin, sexual orientation, gender identity or expression,
20 military status, age, sex, height, weight, marital status, disability,
21 or familial status of such applicant or applicants or any member, stock-
22 holder, director, officer or employee of such applicant or applicants,
23 or of the prospective occupants or tenants of such housing accommo-
24 dation, land or commercial space, in the granting, withholding, extend-
25 ing or renewing, or in the fixing of the rates, terms or conditions of,
26 any such credit;

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

32 c. To use any form of application for credit or use or make any record
33 or inquiry which expresses, directly or indirectly, any limitation,
34 specification, or discrimination as to race, creed, color, national
35 origin, sexual orientation, gender identity or expression, military
36 status, age, sex, height, weight, marital status, disability, or fami-
37 lial status;

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

41 e. To refuse to consider sources of an applicant's income or to
42 subject an applicant's income to discounting, in whole or in part,
43 because of an applicant's race, creed, color, national origin, sexual
44 orientation, gender identity or expression, military status, age, sex,
45 height, weight, marital status, childbearing potential, disability, or
46 familial status;

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

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

51 2. Without limiting the generality of subdivision one of this section,
52 it shall be considered discriminatory if, because of an applicant's or
53 class of applicants' race, creed, color, national origin, sexual orien-
54 tation, gender identity or expression, military status, age, sex,
55 height, weight, marital status or disability, or familial status, (i) an
56 applicant or class of applicants is denied credit in circumstances where

1 other applicants of like overall credit worthiness are granted credit,
2 or (ii) special requirements or conditions, such as requiring co-obli-
3 gors or reapplication upon marriage, are imposed upon an applicant or
4 class of applicants in circumstances where similar requirements or
5 conditions are not imposed upon other applicants of like overall credit
6 worthiness.

7 3. It shall not be considered discriminatory if credit differen-
8 tiations or decisions are based upon factually supportable, objective
9 differences in applicants' overall credit worthiness, which may include
10 reference to such factors as current income, assets and prior credit
11 history of such applicants, as well as reference to any other relevant
12 factually supportable data; provided, however, that no creditor shall
13 consider, in evaluating the credit worthiness of an applicant, aggregate
14 statistics or assumptions relating to race, creed, color, national
15 origin, sexual orientation, gender identity or expression, military
16 status, sex, height, weight, marital status or disability, or to the
17 likelihood of any group of persons bearing or rearing children, or for
18 that reason receiving diminished or interrupted income in the future.

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

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

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

33 c. print or circulate or cause to be printed or circulated any state-
34 ment, advertisement or publication, or to use any form of application
35 for employment as an intern or to make any inquiry in connection with
36 prospective employment, which expresses directly or indirectly, any
37 limitation, specification or discrimination as to age, race, creed,
38 color, national origin, sexual orientation, military status, sex,
39 height, weight, disability, predisposing genetic characteristics, mari-
40 tal status or domestic violence victim status, or any intent to make any
41 such limitation, specification or discrimination, unless based upon a
42 bona fide occupational qualification; provided, however, that neither
43 this paragraph nor any provision of this chapter or other law shall be
44 construed to prohibit the department of civil service or the department
45 of personnel of any city containing more than one county from requesting
46 information from applicants for civil service internships or examina-
47 tions concerning any of the aforementioned characteristics, other than
48 sexual orientation, for the purpose of conducting studies to identify
49 and resolve possible problems in recruitment and testing of members of
50 minority groups to insure the fairest possible and equal opportunities
51 for employment in the civil service for all persons, regardless of age,
52 race, creed, color, national origin, sexual orientation, military
53 status, sex, height, weight, disability, predisposing genetic character-
54 istics, marital status or domestic violence victim status;

55 b. subject an intern to unwelcome harassment based on age, sex,
56 height, weight, race, creed, color, sexual orientation, military status,

1 disability, predisposing genetic characteristics, marital status, domes-
2 tic violence victim status, or national origin, where such harassment
3 has the purpose or effect of unreasonably interfering with the intern's
4 work performance by creating an intimidating, hostile, or offensive
5 working environment.

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

13 § 5. This act shall take effect on the one hundred eightieth day after
14 it shall have become a law. Effective immediately, the addition, amend-
15 ment and/or repeal of any rule or regulation necessary for the implemen-
16 tation of this act on its effective date are authorized to be made and
17 completed on or before such effective date.