STATE OF NEW YORK

9453

IN SENATE

May 30, 2022

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the executive law and the civil rights law, in relation to adding "pregnancy outcome" to the list of protected classes

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

Section 1. Section 292 of the executive law is amended by adding a new subdivision 40 to read as follows:

40. The term "pregnancy outcome" means any actual, potential, or perceived result of a pregnancy, including, but not limited to, abortion, miscarriage, stillbirth, live delivery of an infant regardless of the infant's health or disability status, or death of a newborn due to causes that originated in utero.

§ 2. Subdivisions 1 and 2 of section 291 of the executive law, as amended by chapter 8 of the laws of 2019, are amended to read as follows:

1. The opportunity to obtain employment without discrimination because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** marital status, or disability, is hereby recognized as and declared to be a civil right.

2. The opportunity to obtain education, the use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space without discrimination because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** marital status, or disability, as specified in section two hundred ninety-six of this article, is hereby recognized as and declared to be a civil right.

§ 3. Subdivisions 8 and 9 of section 295 of the executive law, as amended by chapter 8 of the laws of 2019, are amended to read as follows:

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

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

LBD16012-02-2

and of section eleven of article one of the constitution of this state, and the division may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** disability or marital status and make recommendations to the division for the development of policies and procedures in general and in specific instances. The advisory councils also shall disseminate information about the division's activities to organizations and individuals in their localities. Such advisory councils shall be composed of representative citizens, serving without pay, but with reimbursement for actual and necessary traveling expenses; and the division may make provision for technical and clerical assistance to such councils and for the expenses of such assistance.

9. To develop human rights plans and policies for the state and assist in their execution and to make investigations and studies appropriate to effectuate this article and to issue such publications and such results of investigations and research as in its judgement will tend to inform persons of the rights assured and remedies provided under this article, to promote good-will and minimize or eliminate discrimination because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** disability or marital status.

§ 4. Paragraphs (a), (b), (c), (d) and (h) of subdivision 1 of section 296 of the executive law, as amended by chapter 202 of the laws of 2022, 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, **pregnancy outcome,** 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, **pregnancy outcome,** disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, 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, **pregnancy outcome,** disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, 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, **pregnancy outcome,** disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, 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 ensure 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, **pregnancy outcome,** 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, **pregnancy outcome,** disability, predisposing genetic characteristics, familial status, marital status, status as a victim of domestic violence, 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 considered severe or pervasive under precedent applied to harassment claims. Such harassment is an unlawful discriminatory practice when it subjects an individual to inferior terms, conditions or privileges of employment because of the individual's membership in one or more of these protected categories. The fact that such individual did not make a complaint about the harassment to such employer, licensing agency, employment agency or labor organization shall not be determinative of whether such employer, licensing agency, employment agency or labor organization shall be liable. Nothing in this section shall imply that an employee must demonstrate the existence of an individual to whom the employee's treatment must be compared. It shall be an affirmative defense to liability under this subdivision that the harassing conduct does not rise above the level of what a reasonable victim of discrimination with the same protected characteristic or characteristics would consider petty slights or trivial inconveniences.

§ 5. Paragraphs (b), (c) and (d) of subdivision 1-a of section 296 of the executive law, as amended by chapter 202 of the laws of 2022, are amended to read as follows:

(b) To deny to or withhold from any person because of race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, familial status, marital status, or status as a victim of domestic violence, the right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, executive training program, or other occupational training or retraining program;

(c) To discriminate against any person in his or her pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs because of race, creed, color,

national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, familial status, marital status, or status as a victim of domestic violence;

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, familial status, marital status, or status as a victim of domestic violence, or any intention to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

§ 6. Paragraph (a) of subdivision 2 of section 296 of the executive law, as amended by chapter 202 of the laws of 2022, is amended to read as follows:

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

§ 7. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section 296 of the executive law, as amended by chapter 202 of the laws of 2022, are amended to read as follows:

(a) To refuse to sell, rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color, disability, national origin, sexual orientation, gender identity or expression, military status, age, sex, **pregnancy outcome,** marital status, status as a victim of domestic violence, lawful source of income or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

(b) To discriminate against any person because of his or her race, creed, color, disability, national origin, sexual orientation, gender identity or expression, military status, age, sex, **pregnancy outcome,** marital status, status as a victim of domestic violence, lawful source of income or familial status in the terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilities or services in connection therewith.

(c) To cause to be made any written or oral inquiry or record concerning the race, creed, color, disability, national origin, sexual orientation, gender identity or expression, membership in the reserve armed forces of the United States or in the organized militia of the state, age, sex, **pregnancy outcome,** marital status, status as a victim of domestic violence, lawful source of income or familial status of a person seeking to rent or lease any publicly-assisted housing accommodation; provided, however, that nothing in this subdivision shall prohibit a member of the reserve armed forces of the United States or in the organized militia of the state from voluntarily disclosing such membership.

(c-1) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, marital status, status as a victim of domestic violence, lawful source of income or familial status, or any intent to make any such limitation, specification or discrimination.

§ 8. Subdivisions 3-b, 4 and 13 of section 296 of the executive law, as amended by chapter 202 of the laws of 2022, are amended to read as follows:

3-b. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof or any other individual, corporation, partnership or organization for the purpose of inducing a real estate transaction from which any such person or any of its stockholders or members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** disability, marital status, status as a victim of domestic violence, or familial status of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities.

4. It shall be an unlawful discriminatory practice for an educational institution to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant, by reason of his race, color, religion, disability, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, marital status, or status as a victim of domestic violence, except that any such institution which establishes or maintains a policy of educating persons of one sex exclusively may admit students of only one sex.

13. It shall be an unlawful discriminatory practice (i) for any person to boycott or blacklist, or to refuse to buy from, sell to or trade with, or otherwise discriminate against any person, because of the race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** status as a victim of domestic violence, disability, or familial status, or of such person,

or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person wilfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

(a) Boycotts connected with labor disputes; or

(b) Boycotts to protest unlawful discriminatory practices.

§ 9. Subparagraphs 1, 2 and 3 of paragraph (a) of subdivision 5 of section 296 of the executive law, as amended by chapter 202 of the laws of 2022, are amended to read as follows:

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, marital status, status as a victim of domestic violence, lawful source of income or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, marital status, status as a victim of domestic violence, lawful source of income or familial status in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, marital status, status as a victim of domestic violence, lawful source of income or familial status, or any intent to make any such limitation, specification or discrimination.

§ 10. Subparagraphs 1, 2 and 3 of paragraph (b) of subdivision 5 of section 296 of the executive law, as amended by chapter 202 of the laws of 2022, are amended to read as follows:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons land or commercial space because of the race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, marital status, status as a victim of domestic violence, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available;

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, marital status, status as a victim of domestic violence, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space; or in the furnishing of facilities or services in connection therewith;

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

tion for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, marital status, status as a victim of domestic violence, or familial status; or any intent to make any such limitation, specification or discrimination.

§ 11. Subparagraphs 1 and 2 of paragraph (c) and paragraph (d) of subdivision 5 of section 296 of the executive law, as amended by chapter 202 of the laws of 2022, are amended to read as follows:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space to any person or group of persons because of the race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, marital status, status as a victim of domestic violence, lawful source of income or familial status of such person or persons, or to represent that any housing accommodation, land or commercial space is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or commercial space or any facilities of any housing accommodation, land or commercial space from any person or group of persons because of the race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, marital status, lawful source of income or familial status of such person or persons.

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** age, disability, marital status, status as a victim of domestic violence, lawful source of income or familial status; or any intent to make any such limitation, specification or discrimination.

(d) It shall be an unlawful discriminatory practice for any real estate board, because of the race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, **pregnancy outcome,** disability, marital status, status as a victim of domestic violence, lawful source of income or familial status of any individual who is otherwise qualified for membership, to exclude or expel such individual from membership, or to discriminate against such individual in the terms, conditions and privileges of membership in such board.

§ 12. Paragraph (a) of subdivision 9 of section 296 of the executive law, as amended by chapter 202 of the laws of 2022, is amended to read as follows:

(a) It shall be an unlawful discriminatory practice for any fire department or fire company therein, through any member or members thereof, officers, board of fire commissioners or other body or office having

power of appointment of volunteer firefighters, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, to deny to any individual membership in any volunteer fire department or fire company therein, or to expel or discriminate against any volunteer member of a fire department or fire company therein, because of the race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** marital status, status as a victim of domestic violence, or familial status, of such individual.

§ 13. Paragraphs a, b, c and e of subdivision 1 of section 296-a of the executive law, as amended by chapter 202 of the laws of 2022, are amended to read as follows:

a. In the case of applications for credit with respect to the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space to discriminate against any such applicant because of the race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, **pregnancy outcome,** marital status, status as a victim of domestic violence, disability, or familial status of such applicant or applicants or any member, stockholder, director, officer or employee of such applicant or applicants, or of the prospective occupants or tenants of such housing accommodation, land or commercial space, in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any such credit;

b. To discriminate in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any form of credit, on the basis of race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, **pregnancy outcome,** marital status, status as a victim of domestic violence, disability, or familial status;

c. To use any form of application for credit or use or make any record or inquiry which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, **pregnancy outcome,** marital status, status as a victim of domestic violence, disability, or familial status;

e. To refuse to consider sources of an applicant's income or to subject an applicant's income to discounting, in whole or in part, because of an applicant's race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, **pregnancy outcome,** marital status, status as a victim of domestic violence, childbearing potential, disability, or familial status;

§ 14. Subdivisions 2 and 3 of section 296-a of the executive law, as amended by chapter 202 of the laws of 2022, are amended to read as follows:

2. Without limiting the generality of subdivision one of this section, it shall be considered discriminatory if, because of an applicant's or class of applicants' race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, **pregnancy outcome,** marital status, status as a victim of domestic violence, disability, or familial status, (i) an applicant or class of applicants is denied credit in circumstances where other applicants of like overall credit worthiness are granted credit, or (ii) special requirements or conditions, such as requiring co-obligors or reapplication upon marriage, are imposed upon an applicant or class of applicants in

circumstances where similar requirements or conditions are not imposed upon other applicants of like overall credit worthiness.

3. It shall not be considered discriminatory if credit differentiations or decisions are based upon factually supportable, objective differences in applicants' overall credit worthiness, which may include reference to such factors as current income, assets and prior credit history of such applicants, as well as reference to any other relevant factually supportable data; provided, however, that no creditor shall consider, in evaluating the credit worthiness of an applicant, aggregate statistics or assumptions relating to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, **pregnancy outcome,** marital status, status as a victim of domestic violence or disability, or to the likelihood of any group of persons bearing or rearing children, or for that reason receiving diminished or interrupted income in the future.

§ 15. Subdivision 2 of section 40-c of the civil rights law, as amended by chapter 8 of the laws of 2019, is amended to read as follows:

2. No person shall, because of race, creed, color, national origin, sex, **pregnancy outcome,** marital status, sexual orientation, gender identity or expression, or disability, as such term is defined in section two hundred ninety-two of the executive law, be subjected to any discrimination in his or her civil rights, or to any harassment, as defined in section 240.25 of the penal law, in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

§ 16. This act shall take effect immediately.