

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:

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

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

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

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

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

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

26 8. To create such advisory councils, local, regional or state-wide, as
27 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.

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

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

24 § 4. Paragraphs (a), (b), (c), (d) and (h) of subdivision 1 of section
25 296 of the executive law, as amended by chapter 202 of the laws of 2022,
26 are amended to read as follows:

27 (a) For an employer or licensing agency, because of an individual's
28 age, race, creed, color, national origin, sexual orientation, gender
29 identity or expression, military status, sex, pregnancy outcome, disa-
30 bility, predisposing genetic characteristics, familial status, marital
31 status, or status as a victim of domestic violence, to refuse to hire or
32 employ or to bar or to discharge from employment such individual or to
33 discriminate against such individual in compensation or in terms, condi-
34 tions or privileges of employment.

35 (b) For an employment agency to discriminate against any individual
36 because of age, race, creed, color, national origin, sexual orientation,
37 gender identity or expression, military status, sex, pregnancy outcome,
38 disability, predisposing genetic characteristics, familial status, mari-
39 tal status, or status as a victim of domestic violence, in receiving,
40 classifying, disposing or otherwise acting upon applications for its
41 services or in referring an applicant or applicants to an employer or
42 employers.

43 (c) For a labor organization, because of the age, race, creed, color,
44 national origin, sexual orientation, gender identity or expression,
45 military status, sex, pregnancy outcome, disability, predisposing genet-
46 ic characteristics, familial status, marital status, or status as a
47 victim of domestic violence, of any individual, to exclude or to expel
48 from its membership such individual or to discriminate in any way
49 against any of its members or against any employer or any individual
50 employed by an employer.

51 (d) For any employer or employment agency to print or circulate or
52 cause to be printed or circulated any statement, advertisement or publi-
53 cation, or to use any form of application for employment or to make any
54 inquiry in connection with prospective employment, which expresses
55 directly or indirectly, any limitation, specification or discrimination
56 as to age, race, creed, color, national origin, sexual orientation,

1 gender identity or expression, military status, sex, pregnancy outcome,
2 disability, predisposing genetic characteristics, familial status, mari-
3 tal status, or status as a victim of domestic violence, or any intent to
4 make any such limitation, specification or discrimination, unless based
5 upon a bona fide occupational qualification; provided, however, that
6 neither this paragraph nor any provision of this chapter or other law
7 shall be construed to prohibit the department of civil service or the
8 department of personnel of any city containing more than one county from
9 requesting information from applicants for civil service examinations
10 concerning any of the aforementioned characteristics, other than sexual
11 orientation, for the purpose of conducting studies to identify and
12 resolve possible problems in recruitment and testing of members of
13 minority groups to ensure the fairest possible and equal opportunities
14 for employment in the civil service for all persons, regardless of age,
15 race, creed, color, national origin, sexual orientation or gender iden-
16 tity or expression, military status, sex, pregnancy outcome, disability,
17 predisposing genetic characteristics, familial status, or marital
18 status.

19 (h) For an employer, licensing agency, employment agency or labor
20 organization to subject any individual to harassment because of an indi-
21 vidual's age, race, creed, color, national origin, sexual orientation,
22 gender identity or expression, military status, sex, pregnancy outcome,
23 disability, predisposing genetic characteristics, familial status, mari-
24 tal status, status as a victim of domestic violence, or because the
25 individual has opposed any practices forbidden under this article or
26 because the individual has filed a complaint, testified or assisted in
27 any proceeding under this article, regardless of whether such harassment
28 would be considered severe or pervasive under precedent applied to
29 harassment claims. Such harassment is an unlawful discriminatory prac-
30 tice when it subjects an individual to inferior terms, conditions or
31 privileges of employment because of the individual's membership in one
32 or more of these protected categories. The fact that such individual did
33 not make a complaint about the harassment to such employer, licensing
34 agency, employment agency or labor organization shall not be determina-
35 tive of whether such employer, licensing agency, employment agency or
36 labor organization shall be liable. Nothing in this section shall imply
37 that an employee must demonstrate the existence of an individual to whom
38 the employee's treatment must be compared. It shall be an affirmative
39 defense to liability under this subdivision that the harassing conduct
40 does not rise above the level of what a reasonable victim of discrimi-
41 nation with the same protected characteristic or characteristics would
42 consider petty slights or trivial inconveniences.

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

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

54 (c) To discriminate against any person in his or her pursuit of such
55 programs or to discriminate against such a person in the terms, condi-
56 tions or privileges of such programs because of race, creed, color,

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

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

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

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

38 § 7. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section
39 296 of the executive law, as amended by chapter 202 of the laws of 2022,
40 are amended to read as follows:

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

50 (b) To discriminate against any person because of his or her race,
51 creed, color, disability, national origin, sexual orientation, gender
52 identity or expression, military status, age, sex, pregnancy outcome,
53 marital status, status as a victim of domestic violence, lawful source
54 of income or familial status in the terms, conditions or privileges of
55 any publicly-assisted housing accommodations or in the furnishing of
56 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,

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

6 (a) Boycotts connected with labor disputes; or

7 (b) Boycotts to protest unlawful discriminatory practices.

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

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

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

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

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

40 (1) To refuse to sell, rent, lease or otherwise deny to or withhold
41 from any person or group of persons land or commercial space because of
42 the race, creed, color, national origin, sexual orientation, gender
43 identity or expression, military status, sex, pregnancy outcome, age,
44 disability, marital status, status as a victim of domestic violence, or
45 familial status of such person or persons, or to represent that any
46 housing accommodation or land is not available for inspection, sale,
47 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, pregnancy outcome, age, disability, marital
51 status, status as a victim of domestic violence, or familial status in
52 the terms, conditions or privileges of the sale, rental or lease of any
53 such land or commercial space; or in the furnishing of facilities or
54 services in connection therewith;

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

tion for the purchase, rental or lease of 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

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

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

13 a. In the case of applications for credit with respect to the
14 purchase, acquisition, construction, rehabilitation, repair or mainte-
15 nance of any housing accommodation, land or commercial space to discrim-
16 inate against any such applicant because of the race, creed, color,
17 national origin, sexual orientation, gender identity or expression,
18 military status, age, sex, pregnancy outcome, marital status, status as
19 a victim of domestic violence, disability, or familial status of such
20 applicant or applicants or any member, stockholder, director, officer or
21 employee of such applicant or applicants, or of the prospective occu-
22 pants or tenants of such housing accommodation, land or commercial
23 space, in the granting, withholding, extending or renewing, or in the
24 fixing of the rates, terms or conditions of, any such credit;

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

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

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

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

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

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

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

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

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

26 § 16. This act shall take effect immediately.