

STATE OF NEW YORK

7170--B

2023-2024 Regular Sessions

IN ASSEMBLY

May 11, 2023

Introduced by M. of A. L. ROSENTHAL, WALLACE -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 of
2 section 296 of the executive law, as separately amended by chapters 202
3 and 748 of the laws of 2022, are amended to read as follows:
4 (a) For an employer or licensing agency, because of an individual's
5 age, race, creed, color, national origin, citizenship or immigration
6 status, sexual orientation, gender identity or expression, military
7 status, sex, height, weight, disability, predisposing genetic character-
8 istics, familial status, marital status, or status as a victim of domes-
9 tic violence, to refuse to hire or employ or to bar or to discharge from
10 employment such individual or to discriminate against such individual in
11 compensation or in terms, conditions or privileges of employment.
12 (b) For an employment agency to discriminate against any individual
13 because of age, race, creed, color, national origin, citizenship or
14 immigration status, sexual orientation, gender identity or expression,
15 military status, sex, height, weight, disability, predisposing genetic
16 characteristics, familial status, marital status, or status as a victim
17 of domestic violence, in receiving, classifying, disposing or otherwise
18 acting upon applications for its services or in referring an applicant
19 or applicants to an employer or employers.

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

LBD06818-04-4

1 (c) For a labor organization, because of the age, race, creed, color,
2 national origin, citizenship or immigration status, sexual orientation,
3 gender identity or expression, military status, sex, height, weight,
4 disability, predisposing genetic characteristics, familial status, mari-
5 tal status, or status as a victim of domestic violence, of any individ-
6 ual, to exclude or to expel from its membership such individual or to
7 discriminate in any way against any of its members or against any
8 employer or any individual employed by an employer.

9 (d) For any employer or employment agency to print or circulate or
10 cause to be printed or circulated any statement, advertisement or publi-
11 cation, or to use any form of application for employment or to make any
12 inquiry in connection with prospective employment, which expresses
13 directly or indirectly, any limitation, specification or discrimination
14 as to age, race, creed, color, national origin, citizenship or immi-
15 gration status, sexual orientation, gender identity or expression, mili-
16 tary status, sex, height, weight, disability, predisposing genetic char-
17 acteristics, familial status, marital status, or status as a victim of
18 domestic violence, or any intent to make any such limitation, specifica-
19 tion or discrimination, unless based upon a bona fide occupational qual-
20 ification; provided, however, that neither this paragraph nor any
21 provision of this chapter or other law shall be construed to prohibit
22 the department of civil service or the department of personnel of any
23 city containing more than one county from requesting information from
24 applicants for civil service examinations concerning any of the afore-
25 mentioned characteristics, other than sexual orientation, for the
26 purpose of conducting studies to identify and resolve possible problems
27 in recruitment and testing of members of minority groups to ensure the
28 fairest possible and equal opportunities for employment in the civil
29 service for all persons, regardless of age, race, creed, color, national
30 origin, citizenship or immigration status, sexual orientation or gender
31 identity or expression, military status, sex, height, weight, disabili-
32 ty, predisposing genetic characteristics, familial status, or marital
33 status.

34 (h) (1) For an employer, licensing agency, employment agency or labor
35 organization to subject any individual to harassment because of an indi-
36 vidual's age, race, creed, color, national origin, citizenship or immi-
37 gration status, sexual orientation, gender identity or expression, mili-
38 tary status, sex, height, weight, disability, predisposing genetic
39 characteristics, familial status, marital status, status as a victim of
40 domestic violence, or because the individual has opposed any practices
41 forbidden under this article or because the individual has filed a
42 complaint, testified or assisted in any proceeding under this article,
43 regardless of whether such harassment would be considered severe or
44 pervasive under precedent applied to harassment claims. Such harassment
45 is an unlawful discriminatory practice when it subjects an individual to
46 inferior terms, conditions or privileges of employment because of the
47 individual's membership in one or more of these protected categories.
48 The fact that such individual did not make a complaint about the harass-
49 ment to such employer, licensing agency, employment agency or labor
50 organization shall not be determinative of whether such employer,
51 licensing agency, employment agency or labor organization shall be
52 liable. Nothing in this section shall imply that an employee must demon-
53 strate the existence of an individual to whom the employee's treatment
54 must be compared. It shall be an affirmative defense to liability under
55 this subdivision that the harassing conduct does not rise above the
56 level of what a reasonable victim of discrimination with the same

1 protected characteristic or characteristics would consider petty slights
2 or trivial inconveniences.

3 (2) The provisions of this subdivision relating to height and weight
4 shall not apply to an action by an employer, licensing agency, employ-
5 ment agency, or labor organization based on a person's height or weight
6 when such action is required by federal law or regulation. Nothing in
7 this subdivision shall be construed to prevent alternative actions
8 reasonably taken by an employer, licensing agency, employment agency, or
9 labor organization to allow persons who do not meet occupational height
10 or weight criteria to perform the essential requisites and/or normal
11 operations of a job. In instances where an employer, licensing agency,
12 employment agency, or labor organization's action is not required by law
13 or regulation as described in this paragraph, it shall be an affirmative
14 defense that an action was taken because there were no available alter-
15 native actions the entity could have taken that could have reasonably
16 allowed the person to perform the essential requisites and/or normal
17 operations of the job.

18 § 2. Paragraphs (b), (c) and (d) of subdivision 1-a of section 296 of
19 the executive law, as separately amended by chapters 202 and 748 of the
20 laws of 2022, are amended and a new paragraph (e) is added to read as
21 follows:

22 (b) To deny to or withhold from any person because of race, creed,
23 color, national origin, citizenship or immigration status, sexual orien-
24 tation, gender identity or expression, military status, sex, height,
25 weight, age, disability, familial status, marital status, or status as a
26 victim of domestic violence, the right to be admitted to or participate
27 in a guidance program, an apprenticeship training program, on-the-job
28 training program, executive training program, or other occupational
29 training or retraining program;

30 (c) To discriminate against any person in [~~his or her~~] pursuit of such
31 programs or to discriminate against such a person in the terms, condi-
32 tions or privileges of such programs because of race, creed, color,
33 national origin, citizenship or immigration status, sexual orientation,
34 gender identity or expression, military status, sex, height, weight,
35 age, disability, familial status, marital status, or status as a victim
36 of domestic violence;

37 (d) 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 such programs or to make any inquiry in connection with such
40 program which expresses, directly or indirectly, any limitation, spec-
41 ification or discrimination as to race, creed, color, national origin,
42 citizenship or immigration status, sexual orientation, gender identity
43 or expression, military status, sex, height, weight, age, disability,
44 familial status, marital status, or status as a victim of domestic
45 violence, or any intention to make any such limitation, specification or
46 discrimination, unless based on a bona fide occupational qualification.

47 (e) The provisions of this subdivision relating to height and weight
48 shall not apply to an action by an employer, labor organization, employ-
49 ment agency or any joint labor-management committee controlling appren-
50 tice training programs based on a person's height or weight when such
51 action is required by federal law or regulation. Nothing in this subdivi-
52 vision shall be construed to prevent alternative actions reasonably
53 taken by an employer, labor organization, employment agency or any joint
54 labor-management committee controlling apprentice training programs to
55 allow persons who do not meet programmatic height or weight criteria to
56 perform the essential requisites and/or normal operations of a guidance

1 program, an apprenticeship training program, on-the-job training
2 program, executive training program, or other occupational training
3 or retraining program. In instances where an employer, labor organiza-
4 tion, employment agency or any joint labor-management committee control-
5 ling apprentice training programs' action is not required by law or
6 regulation as described in this paragraph, it shall be an affirmative
7 defense that an action was taken because there were no available alter-
8 native actions the entity could have taken that could have reasonably
9 allowed the person to perform the essential requisites and/or normal
10 operations of the guidance program, apprenticeship training program,
11 on-the-job training program, executive training program, or other occu-
12 pational training or retraining program.

13 § 3. Paragraphs (a) and (b) of subdivision 2 of section 296 of the
14 executive law, paragraph (a) as separately amended by chapters 202 and
15 748 of the laws of 2022 and paragraph (b) as amended by chapter 166 of
16 the laws of 2000, are amended and a new paragraph (f) is added to read
17 as follows:

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

40 (b) Nothing in this subdivision shall be construed to prevent the
41 barring of any person, because of the sex of such person, from places of
42 public accommodation, resort or amusement if the division grants an
43 exemption based on bona fide considerations of public policy; nor shall
44 this subdivision apply to the rental of rooms in a housing accommodation
45 which restricts such rental to individuals of one sex. Nothing in this
46 subdivision shall be construed to prevent the barring of any person,
47 because of height or weight of such person, from places of amusement for
48 purposes of compliance with any reasonable amusement industry safety
49 standards.

50 (f) The provisions of this subdivision relating to height and weight
51 shall not apply to an action by any person, being the owner, lessee,
52 proprietor, manager, superintendent, agent or employee of any place of
53 public accommodation, resort or amusement, based on a person's height or
54 weight when such action is required by federal law or regulation, or
55 required by reasonable state safety law or regulation. Nothing in this
56 subdivision shall be construed to prevent alternative actions reasonably

1 taken by any person, being the owner, lessee, proprietor, manager,
2 superintendent, agent or employee of any place of public accommodation,
3 resort or amusement, to allow persons who do not meet height or weight
4 criteria necessary for the normal operations of a particular place or
5 provider of accommodation, or a category of such places or providers, to
6 use or enjoy the accommodations, advantages, services, facilities, or
7 privileges of the place or provider of public accommodation. In
8 instances where any person, being the owner, lessee, proprietor, manag-
9 er, superintendent, agent or employee of any place of public accommo-
10 dation, resort or amusement, action is not required by law or regulation
11 as described in this paragraph, it shall be an affirmative defense that
12 an action was taken because there were no available alternative actions
13 the entity could have taken that could have reasonably allowed the
14 person to use or enjoy the accommodations, advantages, services, facili-
15 ties, or privileges of the place or provider of public accommodation.

16 § 4. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section
17 296 of the executive law, as separately amended by chapters 202 and 748
18 of the laws of 2022, are amended to read as follows:

19 (a) To refuse to sell, rent or lease or otherwise to deny to or with-
20 hold from any person or group of persons such housing accommodations
21 because of the race, creed, color, disability, national origin, citizen-
22 ship or immigration status, sexual orientation, gender identity or
23 expression, military status, age, sex, height, weight, marital status,
24 status as a victim of domestic violence, lawful source of income or
25 familial status of such person or persons, or to represent that any
26 housing accommodation or land is not available for inspection, sale,
27 rental or lease when in fact it is so available.

28 (b) To discriminate against any person because of [~~his or her~~] race,
29 creed, color, disability, national origin, citizenship or immigration
30 status, sexual orientation, gender identity or expression, military
31 status, age, sex, height, weight, marital status, status as a victim of
32 domestic violence, lawful source of income or familial status in the
33 terms, conditions or privileges of any publicly-assisted housing accom-
34 modations or in the furnishing of facilities or services in connection
35 therewith.

36 (c) To cause to be made any written or oral inquiry or record concern-
37 ing the race, creed, color, disability, national origin, citizenship or
38 immigration status, sexual orientation, gender identity or expression,
39 membership in the reserve armed forces of the United States or in the
40 organized militia of the state, age, sex, height, weight, marital
41 status, status as a victim of domestic violence, lawful source of income
42 or familial status of a person seeking to rent or lease any publicly-as-
43 sisted housing accommodation; provided, however, that nothing in this
44 subdivision shall prohibit a member of the reserve armed forces of the
45 United States or in the organized militia of the state from voluntarily
46 disclosing such membership.

47 (c-1) To print or circulate or cause to be printed or circulated any
48 statement, advertisement or publication, or to use any form of applica-
49 tion for the purchase, rental or lease of such housing accommodation or
50 to make any record or inquiry in connection with the prospective
51 purchase, rental or lease of such a housing accommodation which
52 expresses, directly or indirectly, any limitation, specification or
53 discrimination as to race, creed, color, national origin, citizenship or
54 immigration status, sexual orientation, gender identity or expression,
55 military status, sex, height, weight, age, disability, marital status,
56 status as a victim of domestic violence, lawful source of income or

1 familial status, or any intent to make any such limitation, specifica-
2 tion or discrimination.

3 § 5. Subdivisions 3-b, 4 and 13 of section 296 of the executive law,
4 as separately amended by chapters 202 and 748 of the laws of 2022, are
5 amended to read as follows:

6 3-b. It shall be an unlawful discriminatory practice for any real
7 estate broker, real estate salesperson or employee or agent thereof or
8 any other individual, corporation, partnership or organization for the
9 purpose of inducing a real estate transaction from which any such person
10 or any of its stockholders or members may benefit financially, to repre-
11 sent that a change has occurred or will or may occur in the composition
12 with respect to race, creed, color, national origin, citizenship or
13 immigration status, sexual orientation, gender identity or expression,
14 military status, sex, height, weight, disability, marital status, status
15 as a victim of domestic violence, or familial status of the owners or
16 occupants in the block, neighborhood or area in which the real property
17 is located, and to represent, directly or indirectly, that this change
18 will or may result in undesirable consequences in the block, neighbor-
19 hood or area in which the real property is located, including but not
20 limited to the lowering of property values, an increase in criminal or
21 anti-social behavior, or a decline in the quality of schools or other
22 facilities.

23 4. (a) It shall be an unlawful discriminatory practice for an educa-
24 tional institution to deny the use of its facilities to any person
25 otherwise qualified, or to permit the harassment of any student or
26 applicant, by reason of [~~his~~] race, color, religion, disability,
27 national origin, citizenship or immigration status, sexual orientation,
28 gender identity or expression, military status, sex, height, weight,
29 age, marital status, or status as a victim of domestic violence, except
30 that any such institution which establishes or maintains a policy of
31 educating persons of one sex exclusively may admit students of only one
32 sex.

33 (b) The provisions of this subdivision relating to height and weight
34 shall not apply to an action by an educational institution based on a
35 person's height or weight when such action is required by federal law or
36 regulation. Nothing in this subdivision shall be construed to prevent
37 alternative actions reasonably taken by an educational institution to
38 allow persons who do not meet height or weight criteria to participate
39 in educational institution programs, such as athletic programs or other
40 extracurricular programs. In instances where an educational facility's
41 action is not required by law or regulation as described in this para-
42 graph, it shall be an affirmative defense that an action was taken
43 because there were no available alternative actions the entity could
44 have taken that could have reasonably allowed the person to participate
45 in an educational institution's program.

46 13. It shall be an unlawful discriminatory practice (i) for any person
47 to boycott or blacklist, or to refuse to buy from, sell to or trade
48 with, or otherwise discriminate against any person, because of the race,
49 creed, color, national origin, citizenship or immigration status, sexual
50 orientation, gender identity or expression, military status, sex,
51 height, weight, status as a victim of domestic violence, disability, or
52 familial status, or of such person, or of such person's partners,
53 members, stockholders, directors, officers, managers, superintendents,
54 agents, employees, business associates, suppliers or customers, or (ii)
55 for any person wilfully to do any act or refrain from doing any act

1 which enables any such person to take such action. This subdivision
2 shall not apply to:

3 (a) Boycotts connected with labor disputes; or

4 (b) Boycotts to protest unlawful discriminatory practices.

5 § 6. Paragraphs (a), (b), (c) and (d) of subdivision 5 of section 296
6 of the executive law, as separately amended by chapters 202 and 748 of
7 the laws of 2022, are amended to read as follows:

8 (a) It shall be an unlawful discriminatory practice for the owner,
9 lessee, sub-lessee, assignee, or managing agent of, or other person
10 having the right to sell, rent or lease a housing accommodation,
11 constructed or to be constructed, or any agent or employee thereof:

12 (1) To refuse to sell, rent, lease or otherwise to deny to or withhold
13 from any person or group of persons such a housing accommodation because
14 of the race, creed, color, national origin, citizenship or immigration
15 status, sexual orientation, gender identity or expression, military
16 status, sex, height, weight, age, disability, marital status, status as
17 a victim of domestic violence, 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 (2) To discriminate against any person because of race, creed, color,
22 national origin, citizenship or immigration status, sexual orientation,
23 gender identity or expression, military status, sex, height, weight,
24 age, disability, marital status, status as a victim of domestic
25 violence, lawful source of income or familial status in the terms,
26 conditions or privileges of the sale, rental or lease of any such hous-
27 ing accommodation or in the furnishing of facilities or services in
28 connection therewith.

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

41 (4) (i) The provisions of subparagraphs one and two of this paragraph
42 shall not apply (1) to the rental of a housing accommodation in a build-
43 ing which contains housing accommodations for not more than two families
44 living independently of each other, if the owner resides in one of such
45 housing accommodations, (2) to the restriction of the rental of all
46 rooms in a housing accommodation to individuals of the same sex or (3)
47 to the rental of a room or rooms in a housing accommodation, if such
48 rental is by the occupant of the housing accommodation or by the owner
49 of the housing accommodation and the owner resides in such housing
50 accommodation or (4) solely with respect to age and familial status to
51 the restriction of the sale, rental or lease of housing accommodations
52 exclusively to persons sixty-two years of age or older and the spouse of
53 any such person, or for housing intended and operated for occupancy by
54 at least one person fifty-five years of age or older per unit. In deter-
55 mining whether housing is intended and operated for occupancy by persons
56 fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607

1 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall
2 apply. However, such rental property shall no longer be exempt from the
3 provisions of subparagraphs one and two of this paragraph if there is
4 unlawful discriminatory conduct pursuant to subparagraph three of this
5 paragraph.

6 (ii) The provisions of subparagraphs one, two, and three of this para-
7 graph shall not apply (1) to the restriction of the rental of all rooms
8 in a housing accommodation to individuals of the same sex, (2) to the
9 rental of a room or rooms in a housing accommodation, if such rental is
10 by the occupant of the housing accommodation or by the owner of the
11 housing accommodation and the owner resides in such housing accommo-
12 dation, or (3) solely with respect to age and familial status to the
13 restriction of the sale, rental or lease of housing accommodations
14 exclusively to persons sixty-two years of age or older and the spouse of
15 any such person, or for housing intended and operated for occupancy by
16 at least one person fifty-five years of age or older per unit. In deter-
17 mining whether housing is intended and operated for occupancy by persons
18 fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607
19 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall
20 apply.

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

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

34 (2) To discriminate against any person because of race, creed, color,
35 national origin, citizenship or immigration status, sexual orientation,
36 gender identity or expression, military status, sex, height, weight,
37 age, disability, marital status, status as a victim of domestic
38 violence, or familial status in the terms, conditions or privileges of
39 the sale, rental or lease of any such land or commercial space; or in
40 the furnishing of facilities or services in connection therewith;

41 (3) To print or circulate or cause to be printed or circulated any
42 statement, advertisement or publication, or to use any form of applica-
43 tion for the purchase, rental or lease of such land or commercial space
44 or to make any record or inquiry in connection with the prospective
45 purchase, rental or lease of such land or commercial space which
46 expresses, directly or indirectly, any limitation, specification or
47 discrimination as to race, creed, color, national origin, citizenship or
48 immigration status, sexual orientation, gender identity or expression,
49 military status, sex, height, weight, age, disability, marital status,
50 status as a victim of domestic violence, or familial status; or any
51 intent to make any such limitation, specification or discrimination.

52 (4) With respect to age and familial status, the provisions of this
53 paragraph shall not apply to the restriction of the sale, rental or
54 lease of land or commercial space exclusively to persons fifty-five
55 years of age or older and the spouse of any such person, or to the
56 restriction of the sale, rental or lease of land to be used for the

1 construction, or location of housing accommodations exclusively for
2 persons sixty-two years of age or older, or intended and operated for
3 occupancy by at least one person fifty-five years of age or older per
4 unit. In determining whether housing is intended and operated for occu-
5 pancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c)
6 (42 U.S.C. 3607(b) (2) (c)) of the federal Fair Housing Act of 1988, as
7 amended, shall apply.

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

10 (1) To refuse to sell, rent or lease any housing accommodation, land
11 or commercial space to any person or group of persons or to refuse to
12 negotiate for the sale, rental or lease, of any housing accommodation,
13 land or commercial space to any person or group of persons because of
14 the race, creed, color, national origin, citizenship or immigration
15 status, sexual orientation, gender identity or expression, military
16 status, sex, height, weight, age, disability, marital status, status as
17 a victim of domestic violence, lawful source of income or familial
18 status of such person or persons, or to represent that any housing
19 accommodation, land or commercial space is not available for inspection,
20 sale, rental or lease when in fact it is so available, or otherwise to
21 deny or withhold any housing accommodation, land or commercial space or
22 any facilities of any housing accommodation, land or commercial space
23 from any person or group of persons because of the race, creed, color,
24 national origin, citizenship or immigration status, sexual orientation,
25 gender identity or expression, military status, sex, height, weight,
26 age, disability, marital status, lawful source of income or familial
27 status of such person or persons.

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

40 (3) With respect to age and familial status, the provisions of this
41 paragraph shall not apply to the restriction of the sale, rental or
42 lease of any housing accommodation, land or commercial space exclusively
43 to persons fifty-five years of age or older and the spouse of any such
44 person, or to the restriction of the sale, rental or lease of any hous-
45 ing accommodation or land to be used for the construction or location of
46 housing accommodations for persons sixty-two years of age or older, or
47 intended and operated for occupancy by at least one person fifty-five
48 years of age or older per unit. In determining whether housing is
49 intended and operated for occupancy by persons fifty-five years of age
50 or older, Sec. 807 (b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the
51 federal Fair Housing Act of 1988, as amended, shall apply.

52 (d) It shall be an unlawful discriminatory practice for any real
53 estate board, because of the race, creed, color, national origin, citi-
54 zenship or immigration status, sexual orientation, gender identity or
55 expression, military status, age, sex, height, weight, disability, mari-
56 tal status, status as a victim of domestic violence, lawful source of

1 income or familial status of any individual who is otherwise qualified
2 for membership, to exclude or expel such individual from membership, or
3 to discriminate against such individual in the terms, conditions and
4 privileges of membership in such board.

5 § 7. Subdivisions 1, 2 and 3 of section 296-a of the executive law, as
6 separately amended by chapters 202 and 748 of the laws of 2022, are
7 amended to read as follows:

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

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

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

29 c. To use any form of application for credit or use or make any record
30 or inquiry which expresses, directly or indirectly, any limitation,
31 specification, or discrimination as to race, creed, color, national
32 origin, citizenship or immigration status, sexual orientation, gender
33 identity or expression, military status, age, sex, height, weight, mari-
34 tal status, status as a victim of domestic violence, disability, or
35 familial status;

36 d. To make any inquiry of an [~~applicant concerning his or her~~] appli-
37 cant's capacity to reproduce, or [~~his or her~~] such applicant's use or
38 advocacy of any form of birth control or family planning;

39 e. To refuse to consider sources of an applicant's income or to
40 subject an applicant's income to discounting, in whole or in part,
41 because of an applicant's race, creed, color, national origin, citizen-
42 ship or immigration status, sexual orientation, gender identity or
43 expression, military status, age, sex, height, weight, marital status,
44 status as a victim of domestic violence, childbearing potential, disa-
45 bility, or familial status;

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

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

50 2. Without limiting the generality of subdivision one of this section,
51 it shall be considered discriminatory if, because of an applicant's or
52 class of applicants' race, creed, color, national origin, citizenship or
53 immigration status, sexual orientation, gender identity or expression,
54 military status, age, sex, height, weight, marital status, status as a
55 victim of domestic violence, 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, citizenship or immigration status, sexual orientation, gender
16 identity or expression, military status, sex, height, weight, marital
17 status, status as a victim of domestic violence or disability, or to the
18 likelihood of any group of persons bearing or rearing children, or for
19 that reason receiving diminished or interrupted income in the future.

20 § 8. Subdivision 2 and paragraph b of subdivision 3 of section 296-c
21 of the executive law, subdivision 2 as separately amended by chapters
22 202 and 748 of the laws of 2022, paragraphs a, b, and c of subdivision 2
23 and paragraph b of subdivision 3 as amended by chapter 305 of the laws
24 of 2023, are amended to read as follows:

25 2. It shall be an unlawful discriminatory practice for an employer to:

26 a. refuse to hire or employ or to bar or to discharge from internship
27 an intern or to discriminate against such intern in terms, conditions or
28 privileges of employment as an intern because of the intern's age, race,
29 creed, color, national origin, citizenship or immigration status, sexual
30 orientation, gender identity or expression, military status, sex,
31 height, weight, disability, predisposing genetic characteristics, mari-
32 tal status, or status as a victim of domestic violence;

33 b. discriminate against an intern in receiving, classifying, disposing
34 or otherwise acting upon applications for internships because of the
35 intern's age, race, creed, color, national origin, citizenship or immi-
36 gration status, sexual orientation, gender identity or expression, mili-
37 tary status, sex, height, weight, disability, predisposing genetic char-
38 acteristics, marital status, or status as a victim of domestic violence;

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

1 minority groups to ensure the fairest possible and equal opportunities
2 for employment in the civil service for all persons, regardless of age,
3 race, creed, color, national origin, citizenship or immigration status,
4 sexual orientation, military status, sex, height, weight, disability,
5 predisposing genetic characteristics, marital status or status as a
6 victim of domestic violence;

7 d. to discharge, expel or otherwise discriminate against any person
8 [~~because he or she~~] who has opposed any practices forbidden under this
9 article or [~~because he or she~~] who has filed a complaint, testified or
10 assisted in any proceeding under this article; [~~or~~]

11 e. to compel an intern who is pregnant to take a leave of absence,
12 unless the intern is prevented by such pregnancy from performing the
13 activities involved in the job or occupation in a reasonable manner[~~+~~];
14 or

15 f. the provisions of this subdivision relating to height and weight
16 shall not apply to an action by an employer based on a person's height
17 or weight when such action is required by federal law or regulation.
18 Nothing in this subdivision shall be construed to prevent alternative
19 actions reasonably taken by an employer to allow persons who do not meet
20 height or weight criteria to perform the essential requisites and/or
21 normal operations of an internship. In instances where an employer is
22 not required by law or regulation as described in this paragraph, it
23 shall be an affirmative defense that an action was taken because there
24 were no available alternative actions the employer could have taken that
25 could have reasonably allowed the person to perform the essential requi-
26 sites and/or normal operations of the internship.

27 b. subject an intern to unwelcome harassment based on age, sex,
28 height, weight, race, creed, color, sexual orientation, gender identity
29 or expression, military status, disability, predisposing genetic charac-
30 teristics, marital status, status as a victim of domestic violence,
31 national origin, or citizenship or immigration status, or where such
32 harassment has the purpose or effect of unreasonably interfering with
33 the intern's work performance by creating an intimidating, hostile, or
34 offensive working environment.

35 § 9. Section 292 of the executive law is amended by adding two new
36 subdivisions 42 and 43 to read as follows:

37 42. The term "weight" means a numerical measurement of total body
38 weight, the ratio of a person's weight in relation to height, the ratio
39 of a person's weight in relation to any measurement or measurements, or
40 an individual's unique physical composition of weight through body size,
41 shape and proportions. Weight includes measurements of individual body
42 components, such as waist, hip, or chest and any ratio of such body
43 measurements. Weight encompasses, but is not limited to, an impression
44 of a person as fat or thin regardless of numerical measurement. An indi-
45 vidual's body size, shape proportions, and composition may make them
46 appear fat or thin regardless of numerical weight.

47 43. The term "height" means a numerical measurement of total body
48 height, the expression of a person's height in relation to weight, the
49 ratio of a person's height in relation to any measurement or measure-
50 ments, or an individual's unique physical composition of height through
51 body size, shape, or proportions. Height includes measurements of indi-
52 vidual body components, such as leg, torso, arm, foot, and neck. Height
53 encompasses, but is not limited to, an impression of a person as tall or
54 short regardless of numerical measurement. The length of a person's
55 limbs in proportion to the person's body may create the impression of

1 the person as tall, short, or atypically proportioned, independent of
2 numerical measurements of height.

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

10 § 11. This act shall take effect on the one hundred eightieth day
11 after it shall have become a law. Effective immediately, the addition,
12 amendment and/or repeal of any rule or regulation necessary for the
13 implementation of this act on its effective date are authorized to be
14 made and completed on or before such effective date.