STATE OF NEW YORK

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2023-2024 Regular Sessions

IN SENATE

January 20, 2023

Introduced by Sens. HOYLMAN-SIGAL, KRUEGER, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

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:

Section 1. Paragraphs (a), (b), (c), (d) and (h) of subdivision 1 of section 296 of the executive law, as separately amended by chapters 202 and 748 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency to discriminate against any individual because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, in receiving, classifying, disposing or otherwise

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

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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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, 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, citizenship or immigration status, sexual orientation or gender identity or expression, military status, sex, **height, weight,** disability, predisposing genetic characteristics, familial status, or marital status.

(h) **(1)** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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.

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

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

(b) To deny to or withhold from any person because of race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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.

(e) The provisions of this subdivision relating to height and weight shall not apply to an action by an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs based on a person's height or weight when such action is required by federal law or regulation. Nothing in this subdivision shall be construed to prevent alternative actions reasonably taken by an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to

allow persons who do not meet programmatic height or weight criteria to perform the essential requisites and/or normal operations of a guidance program, an apprenticeship training program, on-the-job training program, executive training program, or other occupational training or retraining program. In instances where an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs' action is not required by law or regulation as described in this paragraph, it shall be an affirmative defense that an action was taken because there were no available alternative actions the entity could have taken that could have reasonably allowed the person to perform the essential requisites and/or normal operations of the guidance program, apprenticeship training program, on-the-job training program, executive training program, or other occupational training or retraining program.

§ 3. Paragraphs (a) and (b) of subdivision 2 of section 296 of the executive law, paragraph (a) as separately amended by chapters 202 and 748 of the laws of 2022 and paragraph (b) as amended by chapter 166 of the laws of 2000, are amended and a new paragraph (f) is added 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, height, weight, 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, height, weight, 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex or marital status, or having a disability is unwelcome, objectionable or not acceptable, desired or solicited.

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

(f) The provisions of this subdivision relating to height and weight shall not apply to an action by any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, based on a person's height or weight when such action is required by federal law or regulation, or

required by reasonable state safety law or regulation. Nothing in this subdivision shall be construed to prevent alternative actions reasonably taken by any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, to allow persons who do not meet height or weight criteria necessary for the normal operations of a particular place or provider of accommodation, or a category of such places or providers, to use or enjoy the accommodations, advantages, services, facilities, or privileges of the place or provider of public accommodation. In instances where any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, action is not required by law or regulation as described in this paragraph, it shall be an affirmative defense that an action was taken because there were no available alternative actions the entity could have taken that could have reasonably allowed the person to use or enjoy the accommodations, advantages, services, facilities, or privileges of the place or provider of public accommodation.

§ 4. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section 296 of the executive law, as separately amended by chapters 202 and 748 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, **height, weight,** 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, citizenship or immigration status, 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, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression,

military status, sex, **height, weight,** 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.

§ 5. Subdivisions 3-b, 4 and 13 of section 296 of the executive law, as separately amended by chapters 202 and 748 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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. **(a)** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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.

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

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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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.

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

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

(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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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.

(4) (i) The provisions of subparagraphs one and two of this paragraph shall not apply (1) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of such housing accommodations, (2) to the restriction of the rental of all rooms in a housing accommodation to individuals of the same sex or (3) to the rental of a room or rooms in a housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner resides in such housing accommodation or (4) solely with respect to age and familial status to the restriction of the sale, rental or lease of housing accommodations exclusively to persons sixty-two years of age or older and the spouse of any such person, or for housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons

fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply. However, such rental property shall no longer be exempt from the provisions of subparagraphs one and two of this paragraph if there is unlawful discriminatory conduct pursuant to subparagraph three of this paragraph.

(ii) The provisions of subparagraphs one, two, and three of this paragraph shall not apply (1) to the restriction of the rental of all rooms in a housing accommodation to individuals of the same sex, (2) to the rental of a room or rooms in a housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner resides in such housing accommodation, or (3) solely with respect to age and familial status to the restriction of the sale, rental or lease of housing accommodations exclusively to persons sixty-two years of age or older and the spouse of any such person, or for housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

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

(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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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 application 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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.

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

restriction of the sale, rental or lease of land to be used for the construction, or location of housing accommodations exclusively for persons sixty-two years of age or older, or intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607(b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

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

(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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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.

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

(d) It shall be an unlawful discriminatory practice for any real estate board, because of the race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, **height, weight,** disability, mari-

tal 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.

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

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

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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, **height, weight,** marital status, status as a victim of domestic violence, disability, or familial status;

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

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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, **height, weight,** marital status, status as a victim of domestic violence, childbearing potential, disability, or familial status;

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

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

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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, age, sex, **height, weight,** 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** 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.

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

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

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

b. discriminate against an intern in receiving, classifying, disposing or otherwise acting upon applications for internships because of the intern's age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** disability, predisposing genetic characteristics, marital status, or status as a victim of domestic violence;

c. print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment as an intern 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, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, **height, weight,** disability, predisposing genetic characteristics, 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 internships or 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, citizenship or immigration status, sexual orientation, military status, sex, **height, weight,** disability, predisposing genetic characteristics, marital status or status as a victim of domestic violence;

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

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

or

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

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

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

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

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

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

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

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