

STATE OF NEW YORK

9189

IN SENATE

May 3, 2024

Introduced by Sen. COMRIE -- 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, in relation to prohibiting discrimination based on status as a person with a prior conviction

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

1 Section 1. Subdivisions 1 and 1-a, paragraph (a) of subdivision 2,
2 paragraphs (a), (b) , (c) and (c-1) of subdivision 2-a, subdivisions 3-b
3 and 4, paragraphs (a), (b), (c) and (d) of subdivision 5, paragraph (a)
4 of subdivision 9 and subdivision 13 of section 296 of the executive law,
5 as separately amended by chapters 202 and 748 of the laws of 2022, are
6 amended to read as follows:

7 1. It shall be an unlawful discriminatory practice:

8 (a) For an employer or licensing agency, because of an individual's
9 age, race, creed, color, national origin, citizenship or immigration
10 status, sexual orientation, gender identity or expression, military
11 status, sex, disability, predisposing genetic characteristics, familial
12 status, marital status, [~~or~~] status as a victim of domestic violence, or
13 status as a person with a prior conviction to refuse to hire or employ
14 or to bar or to discharge from employment such individual or to discrim-
15 inate against such individual in compensation or in terms, conditions or
16 privileges of employment.

17 (b) For an employment agency to discriminate against any individual
18 because of age, race, creed, color, national origin, citizenship or
19 immigration status, sexual orientation, gender identity or expression,
20 military status, sex, disability, predisposing genetic characteristics,
21 familial status, marital status, [~~or~~] status as a victim of domestic
22 violence or status as a person with a prior conviction, in receiving,
23 classifying, disposing or otherwise acting upon applications for its
24 services or in referring an applicant or applicants to an employer or
25 employers.

26 (c) For a labor organization, because of the age, race, creed, color,
27 national origin, citizenship or immigration status, sexual orientation,

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

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1 gender identity or expression, military status, sex, disability, predis-
2 posing genetic characteristics, familial status, marital status, [~~or~~]
3 status as a victim of domestic violence[~~7~~] or status as a person with a
4 prior conviction of any individual, to exclude or to expel from its
5 membership such individual or to discriminate in any way against any of
6 its members or against any employer or any individual employed by an
7 employer.

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

33 (e) For any employer, labor organization or employment agency to
34 discharge, expel or otherwise discriminate against any person because
35 [~~he or she~~] such person has opposed any practices forbidden under this
36 article or because [~~he or she~~] such person has filed a complaint, testi-
37 fied or assisted in any proceeding under this article.

38 (f) Nothing in this subdivision shall affect any restrictions upon the
39 activities of persons licensed by the state liquor authority with
40 respect to persons under twenty-one years of age.

41 (g) For an employer to compel an employee who is pregnant to take a
42 leave of absence, unless the employee is prevented by such pregnancy
43 from performing the activities involved in the job or occupation in a
44 reasonable manner.

45 (h) For an employer, licensing agency, employment agency or labor
46 organization to subject any individual to harassment because of an indi-
47 vidual's age, race, creed, color, national origin, citizenship or immi-
48 gration status, sexual orientation, gender identity or expression, mili-
49 tary status, sex, disability, predisposing genetic characteristics,
50 familial status, marital status, status as a victim of domestic
51 violence, status as a person with a prior conviction or because the
52 individual has opposed any practices forbidden under this article or
53 because the individual has filed a complaint, testified or assisted in
54 any proceeding under this article, regardless of whether such harassment
55 would be considered severe or pervasive under precedent applied to
56 harassment claims. Such harassment is an unlawful discriminatory prac-

1 tice when it subjects an individual to inferior terms, conditions or
2 privileges of employment because of the individual's membership in one
3 or more of these protected categories. The fact that such individual
4 did not make a complaint about the harassment to such employer, licens-
5 ing agency, employment agency or labor organization shall not be deter-
6 minative of whether such employer, licensing agency, employment agency
7 or labor organization shall be liable. Nothing in this section shall
8 imply that an employee must demonstrate the existence of an individual
9 to whom the employee's treatment must be compared. It shall be an affir-
10 mative defense to liability under this subdivision that the harassing
11 conduct does not rise above the level of what a reasonable victim of
12 discrimination with the same protected characteristic or characteristics
13 would consider petty slights or trivial inconveniences.

14 1-a. It shall be an unlawful discriminatory practice for an employer,
15 labor organization, employment agency or any joint labor-management
16 committee controlling apprentice training programs:

17 (a) To select persons for an apprentice training program registered
18 with the state of New York on any basis other than their qualifications,
19 as determined by objective criteria which permit review;

20 (b) To deny to or withhold from any person because of race, creed,
21 color, national origin, citizenship or immigration status, sexual orien-
22 tation, gender identity or expression, military status, sex, age, disa-
23 bility, familial status, marital status, [~~ex~~] status as a victim of
24 domestic violence, or status as a person with a prior conviction the
25 right to be admitted to or participate in a guidance program, an appren-
26 ticeship training program, on-the-job training program, executive train-
27 ing program, or other occupational training or retraining program;

28 (c) To discriminate against any person in [~~his or her~~] their pursuit
29 of such programs or to discriminate against such a person in the terms,
30 conditions or privileges of such programs because of race, creed, color,
31 national origin, citizenship or immigration status, sexual orientation,
32 gender identity or expression, military status, sex, age, disability,
33 familial status, marital status, [~~ex~~] status as a victim of domestic
34 violence or status as a person with a prior conviction;

35 (d) To print or circulate or cause to be printed or circulated any
36 statement, advertisement or publication, or to use any form of applica-
37 tion for such programs or to make any inquiry in connection with such
38 program which expresses, directly or indirectly, any limitation, spec-
39 ification or discrimination as to race, creed, color, national origin,
40 citizenship or immigration status, sexual orientation, gender identity
41 or expression, military status, sex, age, disability, familial status,
42 marital status, [~~ex~~] status as a victim of domestic violence or status
43 as a person with a prior conviction, or any intention to make any such
44 limitation, specification or discrimination, unless based on a bona fide
45 occupational qualification.

46 (a) It shall be an unlawful discriminatory practice for any person,
47 being the owner, lessee, proprietor, manager, superintendent, agent or
48 employee of any place of public accommodation, resort or amusement,
49 because of the race, creed, color, national origin, citizenship or immi-
50 gration status, sexual orientation, gender identity or expression, mili-
51 tary status, sex, disability, marital status, [~~ex~~] status as a victim of
52 domestic violence or status as a person with a prior conviction, of any
53 person, directly or indirectly, to refuse, withhold from or deny to such
54 person any of the accommodations, advantages, facilities or privileges
55 thereof, including the extension of credit, or, directly or indirectly,
56 to publish, circulate, issue, display, post or mail any written or

1 printed communication, notice or advertisement, to the effect that any
2 of the accommodations, advantages, facilities and privileges of any such
3 place shall be refused, withheld from or denied to any person on account
4 of race, creed, color, national origin, citizenship or immigration
5 status, sexual orientation, gender identity or expression, military
6 status, sex, disability [~~or~~] marital status or status as a person with a
7 prior conviction, or that the patronage or custom thereof of any person
8 of or purporting to be of any particular race, creed, color, national
9 origin, citizenship or immigration status, sexual orientation, gender
10 identity or expression, military status, sex [~~or~~], marital status or
11 status as a person with a prior conviction, or having a disability is
12 unwelcome, objectionable or not acceptable, desired or solicited.

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

22 (b) To discriminate against any person because of [~~his or her~~] such
23 person's race, creed, color, disability, national origin, citizenship or
24 immigration status, sexual orientation, gender identity or expression,
25 military status, age, sex, marital status, status as a victim of domes-
26 tic violence, status as a person with a prior conviction lawful source
27 of income or familial status in the terms, conditions or privileges of
28 any publicly-assisted housing accommodations or in the furnishing of
29 facilities or services in connection therewith.

30 (c) To cause to be made any written or oral inquiry or record concern-
31 ing the race, creed, color, disability, national origin, citizenship or
32 immigration status, sexual orientation, gender identity or expression,
33 membership in the reserve armed forces of the United States or in the
34 organized militia of the state, age, sex, marital status, status as a
35 victim of domestic violence, lawful source of income [~~or~~], familial
36 status of a person seeking to rent or lease any publicly-assisted hous-
37 ing accommodation, or status as a person with a prior conviction;
38 provided, however, that nothing in this subdivision shall prohibit a
39 member of the reserve armed forces of the United States or in the organ-
40 ized militia of the state from voluntarily disclosing such membership.

41 (c-1) 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 housing accommodation or
44 to make any record or inquiry in connection with the prospective
45 purchase, rental or lease of such a housing accommodation 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, age, disability, marital status, status as a
50 victim of domestic violence, lawful source of income [~~or~~], familial
51 status or status as a person with a prior conviction, or any intent to
52 make any such limitation, specification or discrimination.

53 3-b. It shall be an unlawful discriminatory practice for any real
54 estate broker, real estate salesperson or employee or agent thereof or
55 any other individual, corporation, partnership or organization for the
56 purpose of inducing a real estate transaction from which any such person

1 or any of its stockholders or members may benefit financially, to repre-
2 sent that a change has occurred or will or may occur in the composition
3 with respect to race, creed, color, national origin, citizenship or
4 immigration status, sexual orientation, gender identity or expression,
5 military status, sex, disability, marital status, status as a victim of
6 domestic violence, status as a person with a prior conviction, or fami-
7 lial status of the owners or occupants in the block, neighborhood or
8 area in which the real property is located, and to represent, directly
9 or indirectly, that this change will or may result in undesirable conse-
10 quences in the block, neighborhood or area in which the real property is
11 located, including but not limited to the lowering of property values,
12 an increase in criminal or anti-social behavior, or a decline in the
13 quality of schools or other facilities.

14 4. It shall be an unlawful discriminatory practice for an educational
15 institution to deny the use of its facilities to any person otherwise
16 qualified, or to permit the harassment of any student or applicant, by
17 reason of [~~his~~] their race, color, religion, disability, national
18 origin, citizenship or immigration status, sexual orientation, gender
19 identity or expression, military status, sex, age, marital status, [~~ex~~]
20 status as a victim of domestic violence, or status as a person with a
21 prior conviction, except that any such institution which establishes or
22 maintains a policy of educating persons of one sex exclusively may admit
23 students of only one sex.

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

28 (1) To refuse to sell, rent, lease or otherwise to deny to or withhold
29 from any person or group of persons such a housing accommodation because
30 of the race, creed, color, national origin, citizenship or immigration
31 status, sexual orientation, gender identity or expression, military
32 status, sex, age, disability, marital status, status as a victim of
33 domestic violence, lawful source of income [~~ex~~], familial status of such
34 person or persons, or status as a person with a prior conviction, or to
35 represent that any housing accommodation or land is not available for
36 inspection, sale, rental or lease when in fact it is so available.

37 (2) To discriminate against any person because of race, creed, color,
38 national origin, citizenship or immigration status, sexual orientation,
39 gender identity or expression, military status, sex, age, disability,
40 marital status, status as a victim of domestic violence, status as a
41 person with a prior conviction, lawful source of income or familial
42 status in the terms, conditions or privileges of the sale, rental or
43 lease of any such housing accommodation or in the furnishing of facili-
44 ties or services in connection therewith.

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

1 (4) (i) The provisions of subparagraphs one and two of this paragraph
2 shall not apply (1) to the rental of a housing accommodation in a build-
3 ing which contains housing accommodations for not more than two families
4 living independently of each other, if the owner resides in one of such
5 housing accommodations, (2) to the restriction of the rental of all
6 rooms in a housing accommodation to individuals of the same sex or (3)
7 to the rental of a room or rooms in a housing accommodation, if such
8 rental is by the occupant of the housing accommodation or by the owner
9 of the housing accommodation and the owner resides in such housing
10 accommodation or (4) solely with respect to age and familial status to
11 the restriction of the sale, rental or lease of housing accommodations
12 exclusively to persons sixty-two years of age or older and the spouse of
13 any such person, or for housing intended and operated for occupancy by
14 at least one person fifty-five years of age or older per unit. In deter-
15 mining whether housing is intended and operated for occupancy by persons
16 fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607
17 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall
18 apply. However, such rental property shall no longer be exempt from the
19 provisions of subparagraphs one and two of this paragraph if there is
20 unlawful discriminatory conduct pursuant to subparagraph three of this
21 paragraph.

22 (ii) The provisions of subparagraphs one, two, and three of this para-
23 graph shall not apply (1) to the restriction of the rental of all rooms
24 in a housing accommodation to individuals of the same sex, (2) to the
25 rental of a room or rooms in a housing accommodation, if such rental is
26 by the occupant of the housing accommodation or by the owner of the
27 housing accommodation and the owner resides in such housing accommo-
28 dation, or (3) solely with respect to age and familial status to the
29 restriction of the sale, rental or lease of housing accommodations
30 exclusively to persons sixty-two years of age or older and the spouse of
31 any such person, or for housing intended and operated for occupancy by
32 at least one person fifty-five years of age or older per unit. In deter-
33 mining whether housing is intended and operated for occupancy by persons
34 fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607
35 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall
36 apply.

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

41 (1) To refuse to sell, rent, lease or otherwise deny to or withhold
42 from any person or group of persons land or commercial space because of
43 the race, creed, color, national origin, citizenship or immigration
44 status, sexual orientation, gender identity or expression, military
45 status, sex, age, disability, marital status, status as a victim of
46 domestic violence, [~~ex~~] familial status of such person or persons,
47 status as a person with a prior conviction or to represent that any
48 housing accommodation or land is not available for inspection, sale,
49 rental or lease when in fact it is so available;

50 (2) To discriminate against any person because of race, creed, color,
51 national origin, citizenship or immigration status, sexual orientation,
52 gender identity or expression, military status, sex, age, disability,
53 marital status, status as a victim of domestic violence, [~~ex~~] familial
54 status, or status as a person with a prior conviction in the terms,
55 conditions or privileges of the sale, rental or lease of any such land

1 or commercial space; or in the furnishing of facilities or services in
2 connection therewith;

3 (3) To print or circulate or cause to be printed or circulated any
4 statement, advertisement or publication, or to use any form of applica-
5 tion for the purchase, rental or lease of such land or commercial space
6 or to make any record or inquiry in connection with the prospective
7 purchase, rental or lease of such land or commercial space which
8 expresses, directly or indirectly, any limitation, specification or
9 discrimination as to race, creed, color, national origin, citizenship or
10 immigration status, sexual orientation, gender identity or expression,
11 military status, sex, age, disability, marital status, status as a
12 victim of domestic violence, ~~[ex]~~ familial status, or status as a person
13 with a prior conviction; or any intent to make any such limitation,
14 specification or discrimination.

15 (4) With respect to age and familial status, the provisions of this
16 paragraph shall not apply to the restriction of the sale, rental or
17 lease of land or commercial space exclusively to persons fifty-five
18 years of age or older and the spouse of any such person, or to the
19 restriction of the sale, rental or lease of land to be used for the
20 construction, or location of housing accommodations exclusively for
21 persons sixty-two years of age or older, or intended and operated for
22 occupancy by at least one person fifty-five years of age or older per
23 unit. In determining whether housing is intended and operated for occu-
24 pancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c)
25 (42 U.S.C. 3607(b) (2) (c)) of the federal Fair Housing Act of 1988, as
26 amended, shall apply.

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

29 (1) To refuse to sell, rent or lease any housing accommodation, land
30 or commercial space to any person or group of persons or to refuse to
31 negotiate for the sale, rental or lease, of any housing accommodation,
32 land or commercial space to any person or group of persons because of
33 the race, creed, color, national origin, citizenship or immigration
34 status, sexual orientation, gender identity or expression, military
35 status, sex, age, disability, marital status, status as a victim of
36 domestic violence, lawful source of income ~~[ex]~~, familial status of such
37 person or persons, or status as a person with a prior conviction, or to
38 represent that any housing accommodation, land or commercial space is
39 not available for inspection, sale, rental or lease when in fact it is
40 so available, or otherwise to deny or withhold any housing accommo-
41 dation, land or commercial space or any facilities of any housing accom-
42 modation, land or commercial space from any person or group of persons
43 because of the race, creed, color, national origin, citizenship or immi-
44 gration status, sexual orientation, gender identity or expression, mili-
45 tary status, sex, age, disability, marital status, lawful source of
46 income ~~[ex]~~, familial status of such person or persons, or status as a
47 person with a prior conviction.

48 (2) To print or circulate or cause to be printed or circulated any
49 statement, advertisement or publication, or to use any form of applica-
50 tion for the purchase, rental or lease of any housing accommodation,
51 land or commercial space or to make any record or inquiry in connection
52 with the prospective purchase, rental or lease of any housing accommo-
53 dation, land or commercial space which expresses, directly or indirect-
54 ly, any limitation, specification, or discrimination as to race, creed,
55 color, national origin, citizenship or immigration status, sexual orien-
56 tation, gender identity or expression, military status, sex, age, disa-

1 bility, marital status, status as a victim of domestic violence, lawful
2 source of income [~~ex~~], familial status, or status as a person with a
3 prior conviction; or any intent to make any such limitation, specifica-
4 tion or discrimination.

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

17 (d) It shall be an unlawful discriminatory practice for any real
18 estate board, because of the race, creed, color, national origin, citi-
19 zenship or immigration status, sexual orientation, gender identity or
20 expression, military status, age, sex, disability, marital status,
21 status as a victim of domestic violence, lawful source of income [~~ex~~],
22 familial status, or status as a person with a prior conviction of any
23 individual who is otherwise qualified for membership, to exclude or
24 expel such individual from membership, or to discriminate against such
25 individual in the terms, conditions and privileges of membership in such
26 board.

27 (a) It shall be an unlawful discriminatory practice for any fire
28 department or fire company therein, through any member or members there-
29 of, officers, board of fire commissioners or other body or office having
30 power of appointment of volunteer firefighters, directly or indirectly,
31 by ritualistic practice, constitutional or by-law prescription, by tacit
32 agreement among its members, or otherwise, to deny to any individual
33 membership in any volunteer fire department or fire company therein, or
34 to expel or discriminate against any volunteer member of a fire depart-
35 ment or fire company therein, because of the race, creed, color,
36 national origin, citizenship or immigration status, sexual orientation,
37 gender identity or expression, military status, sex, marital status,
38 status as a victim of domestic violence, [~~ex~~], familial status, or
39 status as a person with a prior conviction of such individual.

40 13. It shall be an unlawful discriminatory practice (i) for any person
41 to boycott or blacklist, or to refuse to buy from, sell to or trade
42 with, or otherwise discriminate against any person, because of the race,
43 creed, color, national origin, citizenship or immigration status, sexual
44 orientation, gender identity or expression, military status, sex, status
45 as a victim of domestic violence, disability, [~~ex~~] familial status, or
46 status as a person with a prior conviction or of such person, or of such
47 person's partners, members, stockholders, directors, officers, managers,
48 superintendents, agents, employees, business associates, suppliers or
49 customers, or (ii) for any person wilfully to do any act or refrain from
50 doing any act which enables any such person to take such action. This
51 subdivision shall not apply to:

52 (a) Boycotts connected with labor disputes; or

53 (b) Boycotts to protest unlawful discriminatory practices.

54 § 2. This act shall take effect immediately.