

STATE OF NEW YORK

7170--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 11, 2023

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Governmental Operations -- 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.

20 (c) For a labor organization, because of the age, race, creed, color,
21 national origin, citizenship or immigration status, sexual orientation,
22 gender identity or expression, military status, sex, height, weight,

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

LBD06818-03-3

1 disability, predisposing genetic characteristics, familial status, mari-
2 tal status, or status as a victim of domestic violence, of any individ-
3 ual, to exclude or to expel from its membership such individual or to
4 discriminate in any way against any of its members or against any
5 employer or any individual employed by an employer.

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

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

1 and/or normal operations of a guidance program, an apprenticeship train-
2 ing program, on-the-job training program, executive training
3 program, or other occupational training or retraining program, including
4 offering incentives that support weight management as part of a volun-
5 tary wellness program. In instances where an employer, labor organiza-
6 tion, employment agency or any joint labor-management committee control-
7 ling apprentice training programs' action is not required by law or
8 regulation or permitted by law or regulation as described in this para-
9 graph, it shall be an affirmative defense that an action was taken
10 because there were no available alternative actions the entity could
11 have taken that could have reasonably allowed the person to perform the
12 essential requisites and/or normal operations of the guidance program,
13 apprenticeship training program, on-the-job training program, executive
14 training program, or other occupational training or retraining program.

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

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

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

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

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

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

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

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

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

48 (c-1) 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 such housing accommodation or
51 to make any record or inquiry in connection with the prospective
52 purchase, rental or lease of such a housing accommodation which
53 expresses, directly or indirectly, any limitation, specification or
54 discrimination as to race, creed, color, national origin, citizenship or
55 immigration status, sexual orientation, gender identity or expression,
56 military status, sex, height, weight, age, disability, marital status,

1 status as a victim of domestic violence, lawful source of income or
2 familial status, or any intent to make any such limitation, specifica-
3 tion or discrimination.

4 § 5. Subdivisions 3-b, 4 and 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 3-b. It shall be an unlawful discriminatory practice for any real
8 estate broker, real estate salesperson or employee or agent thereof or
9 any other individual, corporation, partnership or organization for the
10 purpose of inducing a real estate transaction from which any such person
11 or any of its stockholders or members may benefit financially, to repre-
12 sent that a change has occurred or will or may occur in the composition
13 with respect to race, creed, color, national origin, citizenship or
14 immigration status, sexual orientation, gender identity or expression,
15 military status, sex, height, weight, disability, marital status, status
16 as a victim of domestic violence, or familial status of the owners or
17 occupants in the block, neighborhood or area in which the real property
18 is located, and to represent, directly or indirectly, that this change
19 will or may result in undesirable consequences in the block, neighbor-
20 hood or area in which the real property is located, including but not
21 limited to the lowering of property values, an increase in criminal or
22 anti-social behavior, or a decline in the quality of schools or other
23 facilities.

24 4. (a) It shall be an unlawful discriminatory practice for an educa-
25 tional institution to deny the use of its facilities to any person
26 otherwise qualified, or to permit the harassment of any student or
27 applicant, by reason of his race, color, religion, disability, national
28 origin, citizenship or immigration status, sexual orientation, gender
29 identity or expression, military status, sex, height, weight, age, mari-
30 tal status, or status as a victim of domestic violence, except that any
31 such institution which establishes or maintains a policy of educating
32 persons of one sex exclusively may admit students of only one 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 or permitted by
36 federal, state, or local law or regulation. Nothing in this subdivision
37 shall be construed to prevent alternative actions reasonably taken by an
38 educational institution to allow persons who do not meet height or
39 weight criteria to participate in educational institution programs, such
40 as athletic programs or other extracurricular programs, including offer-
41 ing incentives that support weight management as part of a voluntary
42 wellness program. In instances where an educational facility's action is
43 not required by law or regulation or permitted by law or regulation as
44 described in this paragraph, it shall be an affirmative defense that an
45 action was taken because there were no available alternative actions the
46 entity could have taken that could have reasonably allowed the person to
47 participate in an educational institution's program.

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

1 for any person wilfully to do any act or refrain from doing any act
2 which enables any such person to take such action. This subdivision
3 shall not apply to:

4 (a) Boycotts connected with labor disputes; or

5 (b) Boycotts to protest unlawful discriminatory practices.

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

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

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

22 (2) To discriminate against any person because of race, creed, color,
23 national origin, citizenship or immigration status, sexual orientation,
24 gender identity or expression, military status, sex, height, weight,
25 age, disability, marital status, status as a victim of domestic
26 violence, lawful source of income or familial status in the terms,
27 conditions or privileges of the sale, rental or lease of any such hous-
28 ing accommodation or in the furnishing of facilities or services in
29 connection therewith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (d) It shall be an unlawful discriminatory practice for any real
54 estate board, because of the race, creed, color, national origin, citi-
55 zenship or immigration status, sexual orientation, gender identity or
56 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 capacity to reproduce, or his or her 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 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

1 applicant or class of applicants is denied credit in circumstances where
2 other applicants of like overall credit worthiness are granted credit,
3 or (ii) special requirements or conditions, such as requiring co-obli-
4 gors or reapplication upon marriage, are imposed upon an applicant or
5 class of applicants in circumstances where similar requirements or
6 conditions are not imposed upon other applicants of like overall credit
7 worthiness.

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

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

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

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

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

1 service for all persons, regardless of age, race, creed, color, national
2 origin, citizenship or immigration status, sexual orientation, military
3 status, sex, height, weight, disability, predisposing genetic character-
4 istics, marital status or status as a victim of domestic violence;

5 b. subject an intern to unwelcome harassment based on age, sex,
6 height, weight, race, creed, color, sexual orientation, military status,
7 disability, predisposing genetic characteristics, marital status, status
8 as a victim of domestic violence, national origin, or citizenship or
9 immigration status, or where such harassment has the purpose or effect
10 of unreasonably interfering with the intern's work performance by creat-
11 ing an intimidating, hostile, or offensive working environment.

12 § 9. Subdivision 2 of section 296-c of the executive law is amended by
13 adding a new paragraph f to read as follows:

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

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

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