

# STATE OF NEW YORK

2440--B

Cal. No. 1036

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:

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

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

LBD06818-05-4

1 acting upon applications for its services or in referring an applicant  
2 or applicants to an employer or employers.

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

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

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

1 this subdivision that the harassing conduct does not rise above the  
2 level of what a reasonable victim of discrimination with the same  
3 protected characteristic or characteristics would consider petty slights  
4 or trivial inconveniences.

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

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

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

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

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

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

1 allow persons who do not meet programmatic height or weight criteria to  
2 perform the essential requisites and/or normal operations of a guidance  
3 program, an apprenticeship training program, on-the-job training  
4 program, executive training program, or other occupational training  
5 or retraining 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 as described in this paragraph, it shall be an affirmative  
9 defense that an action was taken because there were no available alter-  
10 native actions the entity could have taken that could have reasonably  
11 allowed the person to perform the essential requisites and/or normal  
12 operations of the guidance program, apprenticeship training program,  
13 on-the-job training program, executive training program, or other occu-  
14 pational 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 reasonable amusement industry safety  
51 standards.

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

1 required by reasonable state safety law or regulation. Nothing in this  
2 subdivision shall be construed to prevent alternative actions reasonably  
3 taken by any person, being the owner, lessee, proprietor, manager,  
4 superintendent, agent or employee of any place of public accommodation,  
5 resort or amusement, to allow persons who do not meet height or weight  
6 criteria necessary for the normal operations of a particular place or  
7 provider of accommodation, or a category of such places or providers, to  
8 use or enjoy the accommodations, advantages, services, facilities, or  
9 privileges of the place or provider of public accommodation. In  
10 instances where any person, being the owner, lessee, proprietor, manag-  
11 er, superintendent, agent or employee of any place of public accommo-  
12 dation, resort or amusement, action is not required by law or regulation  
13 as described in this paragraph, it shall be an affirmative defense that  
14 an action was taken because there were no available alternative actions  
15 the entity could have taken that could have reasonably allowed the  
16 person to use or enjoy the accommodations, advantages, services, facili-  
17 ties, or privileges of the place or provider of public accommodation.

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

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

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

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

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

1 military status, sex, height, weight, age, disability, marital status,  
2 status as a victim of domestic violence, lawful source of income or  
3 familial status, or any intent to make any such limitation, specifica-  
4 tion or discrimination.

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

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

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

35 (b) The provisions of this subdivision relating to height and weight  
36 shall not apply to an action by an educational institution based on a  
37 person's height or weight when such action is required by federal law or  
38 regulation. Nothing in this subdivision shall be construed to prevent  
39 alternative actions reasonably taken by an educational institution to  
40 allow persons who do not meet height or weight criteria to participate  
41 in educational institution programs, such as athletic programs or other  
42 extracurricular programs. In instances where an educational facility's  
43 action is not required by law or regulation as described in this para-  
44 graph, it shall be an affirmative defense that an action was taken  
45 because there were no available alternative actions the entity could  
46 have taken that could have reasonably allowed the person to participate  
47 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-

1 tal status, status as a victim of domestic violence, lawful source of  
2 income or familial status of any individual who is otherwise qualified  
3 for membership, to exclude or expel such individual from membership, or  
4 to discriminate against such individual in the terms, conditions and  
5 privileges of membership in such board.

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

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

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

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

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

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

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

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

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

51 2. Without limiting the generality of subdivision one of this section,  
52 it shall be considered discriminatory if, because of an applicant's or  
53 class of applicants' race, creed, color, national origin, citizenship or  
54 immigration status, sexual orientation, gender identity or expression,  
55 military status, age, sex, height, weight, marital status, status as a  
56 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. Subdivision 2 and paragraph b of subdivision 3 of section 296-c  
22 of the executive law, subdivision 2 as separately amended by chapters  
23 202 and 748 of the laws of 2022, paragraphs a, b, and c of subdivision 2  
24 and paragraph b of subdivision 3 as amended by chapter 305 of the laws  
25 of 2023, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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