

STATE OF NEW YORK

4040--A

2025-2026 Regular Sessions

IN ASSEMBLY

January 30, 2025

Introduced by M. of A. LASHER, WRIGHT, P. CARROLL, EPSTEIN, GLICK, GONZALEZ-ROJAS, HEVESI, HOOKS, KELLES, LEVENBERG, O'PHARROW, REYES, SHIMSKY, TAPIA, TORRES, ZACCARO, ZINERMAN, GALLAGHER, SCHIAVONI, LEE -- 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 codifying the disparate impact standard in the human rights law

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

1 Section 1. Section 296 of the executive law is amended by adding a new
2 subdivision 5-a to read as follows:

3 5-a. (a) For any case alleging housing discrimination under this arti-
4 cle, an unlawful discriminatory practice may be established by a prac-
5 tice's discriminatory effect, even if such practice was not motivated by
6 a discriminatory intent. The practice may still be lawful if supported
7 by a legally sufficient justification, as defined in paragraph (c) of
8 this subdivision.

9 (b) For the purposes of this subdivision, a practice has a discrimina-
10 tory effect where it actually or predictably results in a disparate
11 impact on a group of persons or creates, increases, reinforces, or
12 perpetuates segregated housing patterns because of race, creed, color,
13 national origin, citizenship or immigration status, sexual orientation,
14 gender identity or expression, military status, sex, age, disability,
15 marital status, status as a victim of domestic violence, lawful source
16 of income or familial.

17 (c) (1) A legally sufficient justification exists where the challenged
18 practice:

19 (i) is necessary to achieve one or more substantial, legitimate,
20 nondiscriminatory interests of the respondent; and

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

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1 (ii) those interests could not be served by another practice that has
2 a less discriminatory effect.

3 (2) A legally sufficient justification shall be supported by evidence
4 and may not be hypothetical or speculative. The burdens of proof for
5 establishing each of the two elements of a legally sufficient justifica-
6 tion are set forth in paragraph (d) of this subdivision.

7 (d) (1) The complainant shall have the burden of proving that a chal-
8 lenged practice caused or predictably will cause a discriminatory
9 effect.

10 (2) Once the complainant satisfies the burden of proof set forth in
11 subparagraph one of this paragraph, the respondent shall have the burden
12 of proving that the challenged practice is necessary to achieve one or
13 more substantial, legitimate, nondiscriminatory interests of the
14 respondent.

15 (3) If the respondent satisfies the burden of proof set forth in
16 subparagraph two of this paragraph, the complainant may still prevail
17 upon proving that the substantial, legitimate, nondiscriminatory inter-
18 ests supporting the challenged practice could be served by another prac-
19 tice that has a less discriminatory effect.

20 (e) A demonstration that a practice is supported by a legally suffi-
21 cient justification, as defined in paragraph (c) of this subdivision,
22 may not be used as a defense against a claim of intentional discrimi-
23 nation.

24 (f) Nothing in this subdivision shall be construed or interpreted as
25 limiting, restricting, overriding, or supplanting any broader interpre-
26 tation of the discriminatory practices described in this article or the
27 availability of liability under this article.

28 § 2. This act shall take effect immediately and shall apply to all
29 cases alleging unlawful discriminatory practices constituting housing
30 discrimination occurring on and after such effective date. Effective
31 immediately, the addition, amendment and/or repeal of any rule or regu-
32 lation necessary for the implementation of this act on its effective
33 date are authorized to be made on or before such effective date.