

[Second Reprint]

**SENATE, No. 104**

**STATE OF NEW JERSEY**

**218th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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**SYNOPSIS**

“Diane B. Allen Equal Pay Act.”

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on March 13, 2018, with amendments.

(Sponsorship Updated As Of: 3/27/2018)

1 AN ACT concerning equal pay <sup>1</sup>**[for women]**<sup>1</sup> and employment  
2 discrimination, requiring public contractors to report certain  
3 employment information, amending P.L.1945, c.169, and  
4 supplementing P.L.1952, c.9 (C.34:11-56.1 et seq.).  
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:  
8

9 <sup>2</sup>1. (New section) This act shall be known and may be cited as  
10 the “Diane B. Allen Equal Pay Act.”<sup>2</sup>  
11

12 <sup>2</sup>**[1.]** 2.<sup>2</sup> Section 11 of P.L.1945, c.169 (C.10:5-12) is amended  
13 to read as follows:

14 11. It shall be an unlawful employment practice, or, as the case  
15 may be, an unlawful discrimination:

16 a. For an employer, because of the race, creed, color, national  
17 origin, ancestry, age, marital status, civil union status, domestic  
18 partnership status, affectional or sexual orientation, genetic  
19 information, pregnancy or breastfeeding, sex, gender identity or  
20 expression, disability or atypical hereditary cellular or blood trait of  
21 any individual, or because of the liability for service in the Armed  
22 Forces of the United States or the nationality of any individual, or  
23 because of the refusal to submit to a genetic test or make available  
24 the results of a genetic test to an employer, to refuse to hire or  
25 employ or to bar or to discharge or require to retire, unless justified  
26 by lawful considerations other than age, from employment such  
27 individual or to discriminate against such individual in  
28 compensation or in terms, conditions or privileges of employment;  
29 provided, however, it shall not be an unlawful employment practice  
30 to refuse to accept for employment an applicant who has received a  
31 notice of induction or orders to report for active duty in the armed  
32 forces; provided further that nothing herein contained shall be  
33 construed to bar an employer from refusing to accept for  
34 employment any person on the basis of sex in those certain  
35 circumstances where sex is a bona fide occupational qualification,  
36 reasonably necessary to the normal operation of the particular  
37 business or enterprise; provided further that nothing herein  
38 contained shall be construed to bar an employer from refusing to  
39 accept for employment or to promote any person over 70 years of  
40 age; provided further that it shall not be an unlawful employment  
41 practice for a club exclusively social or fraternal to use club  
42 membership as a uniform qualification for employment, or for a  
43 religious association or organization to utilize religious affiliation

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SLA committee amendments adopted March 5, 2018.

<sup>2</sup>Senate SBA committee amendments adopted March 13, 2018.

1 as a uniform qualification in the employment of clergy, religious  
2 teachers or other employees engaged in the religious activities of  
3 the association or organization, or in following the tenets of its  
4 religion in establishing and utilizing criteria for employment of an  
5 employee; provided further, that it shall not be an unlawful  
6 employment practice to require the retirement of any employee  
7 who, for the two-year period immediately before retirement, is  
8 employed in a bona fide executive or a high policy-making position,  
9 if that employee is entitled to an immediate non-forfeitable annual  
10 retirement benefit from a pension, profit sharing, savings or  
11 deferred retirement plan, or any combination of those plans, of the  
12 employer of that employee which equals in the aggregate at least  
13 \$27,000.00; and provided further that an employer may restrict  
14 employment to citizens of the United States where such restriction  
15 is required by federal law or is otherwise necessary to protect the  
16 national interest.

17 The provisions of subsections a. and b. of section 57 of  
18 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of  
19 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an  
20 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

21 For the purposes of this subsection, a "bona fide executive" is a  
22 top level employee who exercises substantial executive authority  
23 over a significant number of employees and a large volume of  
24 business. A "high policy-making position" is a position in which a  
25 person plays a significant role in developing policy and in  
26 recommending the implementation thereof.

27 For the purposes of this subsection, an unlawful employment  
28 practice occurs, with respect to discrimination in compensation or  
29 in the financial terms or conditions of employment, each occasion  
30 that an individual is affected by application of a discriminatory  
31 compensation decision or other practice, including, but not limited  
32 to, each occasion that wages, benefits, or other compensation are  
33 paid, resulting in whole or in part from the decision or other  
34 practice.

35 In addition to any other relief authorized by the "Law Against  
36 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for  
37 discrimination in compensation or in the financial terms or  
38 conditions of employment, liability shall accrue and an aggrieved  
39 person may obtain relief for back pay for the entire period of time <sup>2</sup>,  
40 except not more than six years, <sup>2</sup> in which the violation with regard  
41 to discrimination in compensation or in the financial terms or  
42 conditions of employment has been continuous, if the violation  
43 continues to occur within the statute of limitations.

44 Nothing in this subsection shall prohibit the application of the  
45 doctrine of "continuing violation" or the "discovery rule" to any  
46 appropriate claim as those doctrines currently exist in New Jersey  
47 common law. It shall be an unlawful employment practice to  
48 require employees or prospective employees to consent to a

1 shortened statute of limitations or to waive any of the protections  
2 provided by the “Law Against Discrimination,” P.L.1945, c.169  
3 (C.10:5-1 et seq.).

4 b. For a labor organization, because of the race, creed, color,  
5 national origin, ancestry, age, marital status, civil union status,  
6 domestic partnership status, affectional or sexual orientation,  
7 gender identity or expression, disability, pregnancy or  
8 breastfeeding, or sex of any individual, or because of the liability  
9 for service in the Armed Forces of the United States or nationality  
10 of any individual, to exclude or to expel from its membership such  
11 individual or to discriminate in any way against any of its members,  
12 against any applicant for, or individual included in, any apprentice  
13 or other training program or against any employer or any individual  
14 employed by an employer; provided, however, that nothing herein  
15 contained shall be construed to bar a labor organization from  
16 excluding from its apprentice or other training programs any person  
17 on the basis of sex in those certain circumstances where sex is a  
18 bona fide occupational qualification reasonably necessary to the  
19 normal operation of the particular apprentice or other training  
20 program.

21 c. For any employer or employment agency to print or circulate  
22 or cause to be printed or circulated any statement, advertisement or  
23 publication, or to use any form of application for employment, or to  
24 make an inquiry in connection with prospective employment, which  
25 expresses, directly or indirectly, any limitation, specification or  
26 discrimination as to race, creed, color, national origin, ancestry,  
27 age, marital status, civil union status, domestic partnership status,  
28 affectional or sexual orientation, gender identity or expression,  
29 disability, nationality, pregnancy or breastfeeding, or sex or liability  
30 of any applicant for employment for service in the Armed Forces of  
31 the United States, or any intent to make any such limitation,  
32 specification or discrimination, unless based upon a bona fide  
33 occupational qualification.

34 d. For any person to take reprisals against any person because  
35 that person has opposed any practices or acts forbidden under this  
36 act or because that person has sought legal advice regarding rights  
37 under this act, shared relevant information with legal counsel,  
38 shared information with a governmental entity, or filed a complaint,  
39 testified or assisted in any proceeding under this act or to coerce,  
40 intimidate, threaten or interfere with any person in the exercise or  
41 enjoyment of, or on account of that person having aided or  
42 encouraged any other person in the exercise or enjoyment of, any  
43 right granted or protected by this act.

44 e. For any person, whether an employer or an employee or not,  
45 to aid, abet, incite, compel or coerce the doing of any of the acts  
46 forbidden under this act, or to attempt to do so.

47 f. (1) For any owner, lessee, proprietor, manager,  
48 superintendent, agent, or employee of any place of public

1 accommodation directly or indirectly to refuse, withhold from or  
2 deny to any person any of the accommodations, advantages,  
3 facilities or privileges thereof, or to discriminate against any person  
4 in the furnishing thereof, or directly or indirectly to publish,  
5 circulate, issue, display, post or mail any written or printed  
6 communication, notice, or advertisement to the effect that any of  
7 the accommodations, advantages, facilities, or privileges of any  
8 such place will be refused, withheld from, or denied to any person  
9 on account of the race, creed, color, national origin, ancestry,  
10 marital status, civil union status, domestic partnership status,  
11 pregnancy or breastfeeding, sex, gender identity or expression,  
12 affectional or sexual orientation, disability, liability for service in  
13 the Armed Forces of the United States or nationality of such person,  
14 or that the patronage or custom thereof of any person of any  
15 particular race, creed, color, national origin, ancestry, marital status,  
16 civil union status, domestic partnership status, pregnancy or  
17 breastfeeding status, sex, gender identity or expression, affectional  
18 or sexual orientation, disability, liability for service in the Armed  
19 Forces of the United States or nationality is unwelcome,  
20 objectionable or not acceptable, desired or solicited, and the  
21 production of any such written or printed communication, notice or  
22 advertisement, purporting to relate to any such place and to be made  
23 by any owner, lessee, proprietor, superintendent or manager thereof,  
24 shall be presumptive evidence in any action that the same was  
25 authorized by such person; provided, however, that nothing  
26 contained herein shall be construed to bar any place of public  
27 accommodation which is in its nature reasonably restricted  
28 exclusively to individuals of one sex, and which shall include but  
29 not be limited to any summer camp, day camp, or resort camp,  
30 bathhouse, dressing room, swimming pool, gymnasium, comfort  
31 station, dispensary, clinic or hospital, or school or educational  
32 institution which is restricted exclusively to individuals of one sex,  
33 provided individuals shall be admitted based on their gender  
34 identity or expression, from refusing, withholding from or denying  
35 to any individual of the opposite sex any of the accommodations,  
36 advantages, facilities or privileges thereof on the basis of sex;  
37 provided further, that the foregoing limitation shall not apply to any  
38 restaurant as defined in R.S.33:1-1 or place where alcoholic  
39 beverages are served.

40 (2) Notwithstanding the definition of "a place of public  
41 accommodation" as set forth in subsection 1. of section 5 of  
42 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,  
43 manager, superintendent, agent, or employee of any private club or  
44 association to directly or indirectly refuse, withhold from or deny to  
45 any individual who has been accepted as a club member and has  
46 contracted for or is otherwise entitled to full club membership any  
47 of the accommodations, advantages, facilities or privileges thereof,  
48 or to discriminate against any member in the furnishing thereof on

1 account of the race, creed, color, national origin, ancestry, marital  
2 status, civil union status, domestic partnership status, pregnancy or  
3 breastfeeding, sex, gender identity, or expression, affectional or  
4 sexual orientation, disability, liability for service in the Armed  
5 Forces of the United States or nationality of such person.

6 In addition to the penalties otherwise provided for a violation of  
7 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)  
8 of subsection f. of this section is the holder of an alcoholic beverage  
9 license issued under the provisions of R.S.33:1-12 for that private  
10 club or association, the matter shall be referred to the Director of  
11 the Division of Alcoholic Beverage Control who shall impose an  
12 appropriate penalty in accordance with the procedures set forth in  
13 R.S.33:1-31.

14 g. For any person, including but not limited to, any owner,  
15 lessee, sublessee, assignee or managing agent of, or other person  
16 having the right of ownership or possession of or the right to sell,  
17 rent, lease, assign, or sublease any real property or part or portion  
18 thereof, or any agent or employee of any of these:

19 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise  
20 to deny to or withhold from any person or group of persons any real  
21 property or part or portion thereof because of race, creed, color,  
22 national origin, ancestry, marital status, civil union status, domestic  
23 partnership status, pregnancy or breastfeeding, sex, gender identity  
24 or expression, affectional or sexual orientation, familial status,  
25 disability, liability for service in the Armed Forces of the United  
26 States, nationality, or source of lawful income used for rental or  
27 mortgage payments;

28 (2) To discriminate against any person or group of persons  
29 because of race, creed, color, national origin, ancestry, marital  
30 status, civil union status, domestic partnership status, pregnancy or  
31 breastfeeding, sex, gender identity or expression, affectional or  
32 sexual orientation, familial status, disability, liability for service in  
33 the Armed Forces of the United States, nationality or source of  
34 lawful income used for rental or mortgage payments in the terms,  
35 conditions or privileges of the sale, rental or lease of any real  
36 property or part or portion thereof or in the furnishing of facilities  
37 or services in connection therewith;

38 (3) To print, publish, circulate, issue, display, post or mail, or  
39 cause to be printed, published, circulated, issued, displayed, posted  
40 or mailed any statement, advertisement, publication or sign, or to  
41 use any form of application for the purchase, rental, lease,  
42 assignment or sublease of any real property or part or portion  
43 thereof, or to make any record or inquiry in connection with the  
44 prospective purchase, rental, lease, assignment, or sublease of any  
45 real property, or part or portion thereof which expresses, directly or  
46 indirectly, any limitation, specification or discrimination as to race,  
47 creed, color, national origin, ancestry, marital status, civil union  
48 status, domestic partnership status, pregnancy or breastfeeding, sex,

1 gender identity, or expression, affectional or sexual orientation,  
2 familial status, disability, liability for service in the Armed Forces  
3 of the United States, nationality, or source of lawful income used  
4 for rental or mortgage payments, or any intent to make any such  
5 limitation, specification or discrimination, and the production of  
6 any such statement, advertisement, publicity, sign, form of  
7 application, record, or inquiry purporting to be made by any such  
8 person shall be presumptive evidence in any action that the same  
9 was authorized by such person; provided, however, that nothing  
10 contained in this subsection shall be construed to bar any person  
11 from refusing to sell, rent, lease, assign or sublease or from  
12 advertising or recording a qualification as to sex for any room,  
13 apartment, flat in a dwelling or residential facility which is planned  
14 exclusively for and occupied by individuals of one sex to any  
15 individual of the exclusively opposite sex on the basis of sex  
16 provided individuals shall be qualified based on their gender  
17 identity or expression;

18 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise  
19 to deny to or withhold from any person or group of persons any real  
20 property or part or portion thereof because of the source of any  
21 lawful income received by the person or the source of any lawful  
22 rent payment to be paid for the real property; or

23 (5) To refuse to rent or lease any real property to another person  
24 because that person's family includes children under 18 years of  
25 age, or to make an agreement, rental or lease of any real property  
26 which provides that the agreement, rental or lease shall be rendered  
27 null and void upon the birth of a child. This paragraph shall not  
28 apply to housing for older persons as defined in subsection mm. of  
29 section 5 of P.L.1945, c.169 (C.10:5-5).

30 h. For any person, including but not limited to, any real estate  
31 broker, real estate salesperson, or employee or agent thereof:

32 (1) To refuse to sell, rent, assign, lease or sublease, or offer for  
33 sale, rental, lease, assignment, or sublease any real property or part  
34 or portion thereof to any person or group of persons or to refuse to  
35 negotiate for the sale, rental, lease, assignment, or sublease of any  
36 real property or part or portion thereof to any person or group of  
37 persons because of race, creed, color, national origin, ancestry,  
38 marital status, civil union status, domestic partnership status,  
39 familial status, pregnancy or breastfeeding, sex, gender identity or  
40 expression, affectional or sexual orientation, liability for service in  
41 the Armed Forces of the United States, disability, nationality, or  
42 source of lawful income used for rental or mortgage payments, or to  
43 represent that any real property or portion thereof is not available  
44 for inspection, sale, rental, lease, assignment, or sublease when in  
45 fact it is so available, or otherwise to deny or withhold any real  
46 property or any part or portion of facilities thereof to or from any  
47 person or group of persons because of race, creed, color, national  
48 origin, ancestry, marital status, civil union status, domestic

1 partnership status, familial status, pregnancy or breastfeeding, sex,  
2 gender identity or expression, affectional or sexual orientation,  
3 liability for service in the Armed Forces of the United States,  
4 disability or nationality;

5 (2) To discriminate against any person because of race, creed,  
6 color, national origin, ancestry, marital status, civil union status,  
7 domestic partnership status, familial status, pregnancy or  
8 breastfeeding, sex, gender identity or expression, affectional or  
9 sexual orientation, disability, nationality, or source of lawful  
10 income used for rental or mortgage payments in the terms,  
11 conditions or privileges of the sale, rental, lease, assignment or  
12 sublease of any real property or part or portion thereof or in the  
13 furnishing of facilities or services in connection therewith;

14 (3) To print, publish, circulate, issue, display, post, or mail, or  
15 cause to be printed, published, circulated, issued, displayed, posted  
16 or mailed any statement, advertisement, publication or sign, or to  
17 use any form of application for the purchase, rental, lease,  
18 assignment, or sublease of any real property or part or portion  
19 thereof or to make any record or inquiry in connection with the  
20 prospective purchase, rental, lease, assignment, or sublease of any  
21 real property or part or portion thereof which expresses, directly or  
22 indirectly, any limitation, specification or discrimination as to race,  
23 creed, color, national origin, ancestry, marital status, civil union  
24 status, domestic partnership status, familial status, pregnancy or  
25 breastfeeding, sex, gender identity or expression, affectional or  
26 sexual orientation, disability, liability for service in the Armed  
27 Forces of the United States, nationality, or source of lawful income  
28 used for rental or mortgage payments or any intent to make any  
29 such limitation, specification or discrimination, and the production  
30 of any such statement, advertisement, publicity, sign, form of  
31 application, record, or inquiry purporting to be made by any such  
32 person shall be presumptive evidence in any action that the same  
33 was authorized by such person; provided, however, that nothing  
34 contained in this subsection h., shall be construed to bar any person  
35 from refusing to sell, rent, lease, assign or sublease or from  
36 advertising or recording a qualification as to sex for any room,  
37 apartment, flat in a dwelling or residential facility which is planned  
38 exclusively for and occupied exclusively by individuals of one sex  
39 to any individual of the opposite sex on the basis of sex, provided  
40 individuals shall be qualified based on their gender identity or  
41 expression;

42 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise  
43 to deny to or withhold from any person or group of persons any real  
44 property or part or portion thereof because of the source of any  
45 lawful income received by the person or the source of any lawful  
46 rent payment to be paid for the real property; or

47 (5) To refuse to rent or lease any real property to another person  
48 because that person's family includes children under 18 years of



1 age, or to make an agreement, rental or lease of any real property  
2 which provides that the agreement, rental or lease shall be rendered  
3 null and void upon the birth of a child. This paragraph shall not  
4 apply to housing for older persons as defined in subsection mm. of  
5 section 5 of P.L.1945, c.169 (C.10:5-5).

6 i. For any person, bank, banking organization, mortgage  
7 company, insurance company or other financial institution, lender  
8 or credit institution involved in the making or purchasing of any  
9 loan or extension of credit, for whatever purpose, whether secured  
10 by residential real estate or not, including but not limited to  
11 financial assistance for the purchase, acquisition, construction,  
12 rehabilitation, repair or maintenance of any real property or part or  
13 portion thereof or any agent or employee thereof:

14 (1) To discriminate against any person or group of persons  
15 because of race, creed, color, national origin, ancestry, marital  
16 status, civil union status, domestic partnership status, pregnancy or  
17 breastfeeding, sex, gender identity or expression, affectional or  
18 sexual orientation, disability, liability for service in the Armed  
19 Forces of the United States, familial status or nationality, in the  
20 granting, withholding, extending, modifying, renewing, or  
21 purchasing, or in the fixing of the rates, terms, conditions or  
22 provisions of any such loan, extension of credit or financial  
23 assistance or purchase thereof or in the extension of services in  
24 connection therewith;

25 (2) To use any form of application for such loan, extension of  
26 credit or financial assistance or to make record or inquiry in  
27 connection with applications for any such loan, extension of credit  
28 or financial assistance which expresses, directly or indirectly, any  
29 limitation, specification or discrimination as to race, creed, color,  
30 national origin, ancestry, marital status, civil union status, domestic  
31 partnership status, pregnancy or breastfeeding, sex, gender identity  
32 or expression, affectional or sexual orientation, disability, liability  
33 for service in the Armed Forces of the United States, familial status  
34 or nationality or any intent to make any such limitation,  
35 specification or discrimination; unless otherwise required by law or  
36 regulation to retain or use such information;

37 (3) (Deleted by amendment, P.L.2003, c.180).

38 (4) To discriminate against any person or group of persons  
39 because of the source of any lawful income received by the person  
40 or the source of any lawful rent payment to be paid for the real  
41 property; or

42 (5) To discriminate against any person or group of persons  
43 because that person's family includes children under 18 years of  
44 age, or to make an agreement or mortgage which provides that the  
45 agreement or mortgage shall be rendered null and void upon the  
46 birth of a child. This paragraph shall not apply to housing for older  
47 persons as defined in subsection mm. of section 5 of P.L.1945,  
48 c.169 (C.10:5-5).

1 j. For any person whose activities are included within the  
2 scope of this act to refuse to post or display such notices concerning  
3 the rights or responsibilities of persons affected by this act as the  
4 Attorney General may by regulation require.

5 k. For any real estate broker, real estate salesperson or  
6 employee or agent thereof or any other individual, corporation,  
7 partnership, or organization, for the purpose of inducing a  
8 transaction for the sale or rental of real property from which  
9 transaction such person or any of its members may benefit  
10 financially, to represent that a change has occurred or will or may  
11 occur in the composition with respect to race, creed, color, national  
12 origin, ancestry, marital status, civil union status, domestic  
13 partnership status, familial status, pregnancy or breastfeeding, sex,  
14 gender identity or expression, affectional or sexual orientation,  
15 disability, liability for service in the Armed Forces of the United  
16 States, nationality, or source of lawful income used for rental or  
17 mortgage payments of the owners or occupants in the block,  
18 neighborhood or area in which the real property is located, and to  
19 represent, directly or indirectly, that this change will or may result  
20 in undesirable consequences in the block, neighborhood or area in  
21 which the real property is located, including, but not limited to the  
22 lowering of property values, an increase in criminal or anti-social  
23 behavior, or a decline in the quality of schools or other facilities.

24 l. For any person to refuse to buy from, sell to, lease from or  
25 to, license, contract with, or trade with, provide goods, services or  
26 information to, or otherwise do business with any other person on  
27 the basis of the race, creed, color, national origin, ancestry, age,  
28 pregnancy or breastfeeding, sex, gender identity or expression,  
29 affectional or sexual orientation, marital status, civil union status,  
30 domestic partnership status, liability for service in the Armed  
31 Forces of the United States, disability, nationality, or source of  
32 lawful income used for rental or mortgage payments of such other  
33 person or of such other person's spouse, partners, members,  
34 stockholders, directors, officers, managers, superintendents, agents,  
35 employees, business associates, suppliers, or customers. This  
36 subsection shall not prohibit refusals or other actions (1) pertaining  
37 to employee-employer collective bargaining, labor disputes, or  
38 unfair labor practices, or (2) made or taken in connection with a  
39 protest of unlawful discrimination or unlawful employment  
40 practices.

41 m. For any person to:

42 (1) Grant or accept any letter of credit or other document which  
43 evidences the transfer of funds or credit, or enter into any contract  
44 for the exchange of goods or services, where the letter of credit,  
45 contract, or other document contains any provisions requiring any  
46 person to discriminate against or to certify that he, she or it has not  
47 dealt with any other person on the basis of the race, creed, color,  
48 national origin, ancestry, age, pregnancy or breastfeeding, sex,

1 gender identity or expression, affectional or sexual orientation,  
2 marital status, civil union status, domestic partnership status,  
3 disability, liability for service in the Armed Forces of the United  
4 States, or nationality of such other person or of such other person's  
5 spouse, partners, members, stockholders, directors, officers,  
6 managers, superintendents, agents, employees, business associates,  
7 suppliers, or customers.

8 (2) Refuse to grant or accept any letter of credit or other  
9 document which evidences the transfer of funds or credit, or refuse  
10 to enter into any contract for the exchange of goods or services, on  
11 the ground that it does not contain such a discriminatory provision  
12 or certification.

13 The provisions of this subsection shall not apply to any letter of  
14 credit, contract, or other document which contains any provision  
15 pertaining to employee-employer collective bargaining, a labor  
16 dispute or an unfair labor practice, or made in connection with the  
17 protest of unlawful discrimination or an unlawful employment  
18 practice, if the other provisions of such letter of credit, contract, or  
19 other document do not otherwise violate the provisions of this  
20 subsection.

21 n. For any person to aid, abet, incite, compel, coerce, or induce  
22 the doing of any act forbidden by subsections l. and m. of section  
23 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to  
24 do so. Such prohibited conduct shall include, but not be limited to:

25 (1) Buying from, selling to, leasing from or to, licensing,  
26 contracting with, trading with, providing goods, services, or  
27 information to, or otherwise doing business with any person  
28 because that person does, or agrees or attempts to do, any such act  
29 or any act prohibited by this subsection; or

30 (2) Boycotting, commercially blacklisting or refusing to buy  
31 from, sell to, lease from or to, license, contract with, provide goods,  
32 services or information to, or otherwise do business with any person  
33 because that person has not done or refuses to do any such act or  
34 any act prohibited by this subsection; provided that this subsection  
35 shall not prohibit refusals or other actions either pertaining to  
36 employee-employer collective bargaining, labor disputes, or unfair  
37 labor practices, or made or taken in connection with a protest of  
38 unlawful discrimination or unlawful employment practices.

39 o. For any multiple listing service, real estate brokers'  
40 organization or other service, organization or facility related to the  
41 business of selling or renting dwellings to deny any person access  
42 to or membership or participation in such organization, or to  
43 discriminate against such person in the terms or conditions of such  
44 access, membership, or participation, on account of race, creed,  
45 color, national origin, ancestry, age, marital status, civil union  
46 status, domestic partnership status, familial status, pregnancy or  
47 breastfeeding, sex, gender identity or expression, affectional or

1 sexual orientation, disability, liability for service in the Armed  
2 Forces of the United States or nationality.

3 p. Nothing in the provisions of this section shall affect the  
4 ability of an employer to require employees to adhere to reasonable  
5 workplace appearance, grooming and dress standards not precluded  
6 by other provisions of State or federal law, except that an employer  
7 shall allow an employee to appear, groom and dress consistent with  
8 the employee's gender identity or expression.

9 q. (1) For any employer to impose upon a person as a condition  
10 of obtaining or retaining employment, including opportunities for  
11 promotion, advancement or transfers, any terms or conditions that  
12 would require a person to violate or forego a sincerely held  
13 religious practice or religious observance, including but not limited  
14 to the observance of any particular day or days or any portion  
15 thereof as a Sabbath or other holy day in accordance with the  
16 requirements of the religion or religious belief, unless, after  
17 engaging in a bona fide effort, the employer demonstrates that it is  
18 unable to reasonably accommodate the employee's religious  
19 observance or practice without undue hardship on the conduct of the  
20 employer's business. Notwithstanding any other provision of law to  
21 the contrary, an employee shall not be entitled to premium wages or  
22 premium benefits for work performed during hours to which those  
23 premium wages or premium benefits would ordinarily be  
24 applicable, if the employee is working during those hours only as an  
25 accommodation to his religious requirements. Nothing in this  
26 subsection q. shall be construed as reducing:

27 (a) The number of the hours worked by the employee which are  
28 counted towards the accruing of seniority, pension or other benefits;  
29 or

30 (b) Any premium wages or benefits provided to an employee  
31 pursuant to a collective bargaining agreement.

32 (2) For an employer to refuse to permit an employee to utilize  
33 leave, as provided for in this subsection q., which is solely used to  
34 accommodate the employee's sincerely held religious observance or  
35 practice. Except where it would cause an employer to incur an  
36 undue hardship, no person shall be required to remain at his place  
37 of employment during any day or days or portion thereof that, as a  
38 requirement of his religion, he observes as his Sabbath or other holy  
39 day, including a reasonable time prior and subsequent thereto for  
40 travel between his place of employment and his home; provided that  
41 any such absence from work shall, wherever practicable in the  
42 reasonable judgment of the employer, be made up by an equivalent  
43 amount of time and work at some other mutually convenient time,  
44 or shall be charged against any leave with pay ordinarily granted,  
45 other than sick leave, and any such absence not so made up or  
46 charged, may be treated by the employer of that person as leave  
47 taken without pay.

1 (3) (a) For purposes of this subsection q., "undue hardship"  
2 means an accommodation requiring unreasonable expense or  
3 difficulty, unreasonable interference with the safe or efficient  
4 operation of the workplace or a violation of a bona fide seniority  
5 system or a violation of any provision of a bona fide collective  
6 bargaining agreement.

7 (b) In determining whether the accommodation constitutes an  
8 undue hardship, the factors considered shall include:

9 (i) The identifiable cost of the accommodation, including the  
10 costs of loss of productivity and of retaining or hiring employees or  
11 transferring employees from one facility to another, in relation to  
12 the size and operating cost of the employer.

13 (ii) The number of individuals who will need the particular  
14 accommodation for a sincerely held religious observance or  
15 practice.

16 (iii) For an employer with multiple facilities, the degree to  
17 which the geographic separateness or administrative or fiscal  
18 relationship of the facilities will make the accommodation more  
19 difficult or expensive.

20 (c) An accommodation shall be considered to constitute an  
21 undue hardship if it will result in the inability of an employee to  
22 perform the essential functions of the position in which he or she is  
23 employed.

24 (d) (i) The provisions of this subsection q. shall be applicable  
25 only to reasonable accommodations of religious observances and  
26 shall not supersede any definition of undue hardship or standards  
27 for reasonable accommodation of the disabilities of employees.

28 (ii) This subsection q. shall not apply where the uniform  
29 application of terms and conditions of attendance to employees is  
30 essential to prevent undue hardship to the employer. The burden of  
31 proof regarding the applicability of this subparagraph (d) shall be  
32 upon the employer.

33 r. For any employer to take reprisals against any employee for  
34 requesting from <sup>1</sup>, discussing with<sup>1</sup>, or disclosing to, any other  
35 employee or former employee of the employer, a lawyer from  
36 whom the employee seeks legal advice, or any government agency  
37 information regarding the job title, occupational category, and rate  
38 of compensation, including benefits, of the employee or any other  
39 employee or former employee of the employer, or the gender, race,  
40 ethnicity, military status, or national origin of the employee or any  
41 other employee or former employee of the employer, regardless of  
42 whether the request was responded to <sup>1</sup>], if the purpose of the  
43 request for the information was to assist in investigating the  
44 possibility of the occurrence of, or in taking of legal action  
45 regarding, potential discriminatory treatment concerning pay,  
46 compensation, bonuses, other compensation, or benefits<sup>1</sup>, or to  
47 require, as a condition of employment, any employee or prospective  
48 employee to sign a waiver, or to otherwise require an employee or

1 prospective employee to agree, not to make those requests or  
2 disclosures. Nothing in this subsection shall be construed to require  
3 an employee to disclose such information about the employee  
4 herself to any other employee or former employee of the employer  
5 or to any authorized representative of the other employee or former  
6 employee.

7 s. For an employer to treat, for employment-related purposes, a  
8 woman employee that the employer knows, or should know, is  
9 affected by pregnancy or breastfeeding in a manner less favorable  
10 than the treatment of other persons not affected by pregnancy or  
11 breastfeeding but similar in their ability or inability to work. In  
12 addition, an employer of an employee who is a woman affected by  
13 pregnancy shall make available to the employee reasonable  
14 accommodation in the workplace, such as bathroom breaks, breaks  
15 for increased water intake, periodic rest, assistance with manual  
16 labor, job restructuring or modified work schedules, and temporary  
17 transfers to less strenuous or hazardous work, for needs related to  
18 the pregnancy when the employee, based on the advice of her  
19 physician, requests the accommodation, and, in the case of a  
20 employee breast feeding her infant child, the accommodation shall  
21 include reasonable break time each day to the employee and a  
22 suitable room or other location with privacy, other than a toilet stall,  
23 in close proximity to the work area for the employee to express  
24 breast milk for the child, unless the employer can demonstrate that  
25 providing the accommodation would be an undue hardship on the  
26 business operations of the employer. The employer shall not in any  
27 way penalize the employee in terms, conditions or privileges of  
28 employment for requesting or using the accommodation. Workplace  
29 accommodation provided pursuant to this subsection and paid or  
30 unpaid leave provided to an employee affected by pregnancy or  
31 breastfeeding shall not be provided in a manner less favorable than  
32 accommodations or leave provided to other employees not affected  
33 by pregnancy or breastfeeding but similar in their ability or inability  
34 to work. This subsection shall not be construed as otherwise  
35 increasing or decreasing any employee's rights under law to paid or  
36 unpaid leave in connection with pregnancy or breastfeeding.

37 For the purposes of this section "pregnancy or breastfeeding"  
38 means pregnancy, childbirth, and breast feeding or expressing milk  
39 for breastfeeding, or medical conditions related to pregnancy,  
40 childbirth, or breastfeeding, including recovery from childbirth.

41 For the purposes of this subsection, in determining whether an  
42 accommodation would impose undue hardship on the operation of  
43 an employer's business, the factors to be considered include: the  
44 overall size of the employer's business with respect to the number  
45 of employees, number and type of facilities, and size of budget; the  
46 type of the employer's operations, including the composition and  
47 structure of the employer's workforce; the nature and cost of the  
48 accommodation needed, taking into consideration the availability of

1 tax credits, tax deductions, and outside funding; and the extent to  
2 which the accommodation would involve waiver of an essential  
3 requirement of a job as opposed to a tangential or non-business  
4 necessity requirement.

5 t. For an employer to pay any of its employees <sup>1</sup>who is a  
6 member of a protected class<sup>1</sup> at a rate of compensation, including  
7 benefits, which is less than the rate paid by the employer to  
8 employees <sup>1</sup>[of the other sex] who are not members of the  
9 protected class<sup>1</sup> for substantially similar work, when viewed as a  
10 composite of skill, effort and responsibility. An employer who is  
11 paying a rate of compensation in violation of this subsection shall  
12 not reduce the rate of compensation of any employee in order to  
13 comply with this subsection. An employer may pay a different rate  
14 of compensation only if the employer demonstrates that the  
15 differential is made pursuant to a seniority system, a merit system,  
16 or the employer demonstrates:

17 (1) That the differential is based on one or more legitimate, bona  
18 fide factors other than <sup>1</sup>[sex] the characteristics of members of the  
19 protected class<sup>1</sup>, such as training, education or experience, or the  
20 quantity or quality of production;

21 (2) That the factor or factors <sup>1</sup>are not based on, and<sup>1</sup> do not  
22 perpetuate<sup>1</sup>, <sup>1</sup>a <sup>1</sup>[sex-based]<sup>1</sup> differential in compensation <sup>1</sup>based  
23 on sex or any other characteristic of members of a protected class<sup>1</sup>;

24 (3) That each of the factors is applied reasonably;

25 (4) That one or more of the factors account for the entire wage  
26 differential; and

27 (5) That the factors are job-related with respect to the position  
28 in question and based on a legitimate business necessity. A factor  
29 based on business necessity shall not apply if it is demonstrated that  
30 there are alternative business practices that would serve the same  
31 business purpose without producing the wage differential.

32 Comparisons of wage rates shall be based on wage rates in all of  
33 an employer's operations or facilities. <sup>1</sup>For the purposes of this  
34 subsection, "member of a protected class" means an employee who  
35 has one or more characteristics, including race, creed, color,  
36 national origin, nationality, ancestry, age, marital status, civil union  
37 status, domestic partnership status, affectional or sexual orientation,  
38 genetic information, pregnancy, sex, gender identity or expression,  
39 disability or atypical hereditary cellular or blood trait of any  
40 individual, or liability for service in the armed forces, for which  
41 subsection a. of this section prohibits an employer from refusing to  
42 hire or employ or barring or discharging or requiring to retire from  
43 employment or discriminating against the individual in  
44 compensation or in terms, conditions or privileges of employment.<sup>1</sup>

45 (cf: P.L.2017, c.263, s.1).

1       <sup>2</sup>3. Section 12 of P.L.1945, c.169 (C.10:5-13) is amended to  
2 read as follows:

3       12. Any person claiming to be aggrieved by an unlawful  
4 employment practice or an unlawful discrimination may, personally  
5 or by an attorney-at-law, make, sign and file with the division a  
6 verified complaint in writing which shall state the name and address  
7 of the person, employer, labor organization, employment agency,  
8 owner, lessee, proprietor, manager, superintendent, or agent alleged  
9 to have committed the unlawful employment practice or unlawful  
10 discrimination complained of and which shall set forth the  
11 particulars thereof and shall contain such other information as may  
12 be required by the division. Upon receipt of the complaint, the  
13 division shall notify the complainant on a form promulgated by the  
14 director of the division and approved by the Attorney General of the  
15 complainant's rights under this act, including the right to file a  
16 complaint in the Superior Court to be heard before a jury; of the  
17 jurisdictional limitations of the division; and any other provisions of  
18 this act, without interpretation, that may apply to the complaint. The  
19 Commissioner of Labor and Workforce Development, the Attorney  
20 General, or the Commissioner of Education may, in like manner,  
21 make, sign and file such complaint. Any employer whose  
22 employees, or some of them, refuse or threaten to refuse to co-  
23 operate with the provisions of this act, may file with the division a  
24 verified complaint asking for assistance by conciliation or other  
25 remedial action.

26       Any complainant may initiate suit in Superior Court under this  
27 act without first filing a complaint with the division or any  
28 municipal office. Upon the application of any party, a jury trial  
29 shall be directed to try the validity of any claim under this act  
30 specified in the suit. All remedies available in common law tort  
31 actions shall be available to prevailing plaintiffs. These remedies  
32 are in addition to any provided by this act or any other statute.  
33 Prosecution of such suit in Superior Court under this act shall bar  
34 the filing of a complaint with the division or any municipal office  
35 during the pendency of any such suit. If a jury determines that an  
36 employer is guilty of an unlawful employment practice prohibited  
37 by subsection r. or t. of section 11 of P.L.1945, c.169 (C.10:5-12),  
38 the judge shall award three times any monetary damages to the  
39 person or persons aggrieved by the violation.

40       At any time after 180 days from the filing of a complaint with  
41 the division, a complainant may file a request with the division to  
42 present the action personally or through counsel to the Office of  
43 Administrative Law. Upon such request, the director of the division  
44 shall file the action with the Office of Administrative Law,  
45 provided that no action may be filed with the Office of  
46 Administrative Law where the director of the division has found  
47 that no probable cause exists to credit the allegations of the  
48 complaint or has otherwise dismissed the complaint.



1 A party to an action based upon a violation of this act shall mail  
2 a copy of the initial pleadings or claims, amended pleadings or  
3 claims, counterclaims, briefs, and legal memoranda to the division  
4 at the same time as filing such documents with the Office of  
5 Administrative Law or the court. Upon application to the Office of  
6 Administrative Law or to the court wherein the matter is pending,  
7 the division shall be permitted to intervene.<sup>2</sup>

8 (cf: P.L.1990, c.12, s.2)

9  
10 <sup>2</sup>~~2.~~ 4.<sup>2</sup> Section 16 of P.L.1945, c.169 (C.10:5-17) is  
11 amended to read as follows:

12 16. If, upon all evidence at the hearing, the director shall find  
13 that the respondent has engaged in any unlawful employment  
14 practice or unlawful discrimination as defined in this act, the  
15 director shall state his findings of fact and conclusions of law and  
16 shall issue and cause to be served on such respondent an order  
17 requiring such respondent to cease and desist from such unlawful  
18 employment practice or unlawful discrimination and to take such  
19 affirmative action, including, but not limited to, hiring,  
20 reinstatement or upgrading of employees, with or without back pay,  
21 or restoration to membership, in any respondent labor organization,  
22 or extending full and equal accommodations, advantages, facilities,  
23 and privileges to all persons, as, in the judgment of the director, will  
24 effectuate the purpose of this act, and including a requirement for  
25 report of the manner of compliance. If the conduct violative of this  
26 act constitutes any form of unlawful economic discrimination  
27 prohibited in ~~section 11, subsections~~ subsection 1., m., and or  
28 n. of this act, ~~section 11 of P.L.1945, c.169 (C.10:5-12), or any~~  
29 form of unlawful employment practice prohibited by subsection r.  
30 or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the affirmative  
31 action taken by the director may include the award of three-fold  
32 damages to the person or persons aggrieved by the violation. The  
33 director shall have the power to use reasonably certain bases,  
34 including but not limited to list, catalogue or market prices or  
35 values, or contract or advertised terms and conditions, in order to  
36 determine particulars or performance in giving appropriate remedy.  
37 In addition to any other remedies provided by P.L.1945,  
38 c.169 (C.10:5-1 et seq.), a prevailing complainant may recover  
39 damages to compensate for emotional distress caused by the  
40 activities found to be in violation of P.L.1945, c.169 (C.10:5-1 et  
41 seq.) to the same extent as is available in common law tort actions.  
42 In any case in which the director, Attorney General, or appropriate  
43 organization is a complainant, on behalf of named or unnamed  
44 individuals or a class of individuals, any of the remedies or relief  
45 allowed by this act may be awarded or applied to the named or  
46 unnamed individual victims of discrimination. If, upon all  
47 evidence, the director shall find that the respondent has not engaged  
48 in any such unlawful practice or unlawful discrimination, the

1 director shall state his findings of fact and conclusions of law and  
2 shall issue and cause to be served on the complainant an order  
3 dismissing the said complaint as to such respondent.

4 (cf: P.L.2003, c.180, s.16)

5

6 <sup>2</sup>[3.] 5.<sup>2</sup> (New section) a. Any employer, regardless of the  
7 location of the employer, who enters into a contract with a public  
8 body to provide qualifying services to the public body shall provide  
9 a report to the Commissioner of Labor and Workforce  
10 Development, in a form issued by regulation promulgated by the  
11 commissioner, of information regarding the <sup>2</sup>compensation and  
12 hours worked by employees categorized by<sup>2</sup> gender, race, <sup>2</sup>[job  
13 title] ethnicity<sup>2</sup>, <sup>2</sup>[occupational] and job<sup>2</sup> category <sup>2</sup>[], and total  
14 compensation of every employee of the employer employed in the  
15 State in connection with the contract]<sup>2</sup>. <sup>2</sup>[The employer shall  
16 provide the commissioner, throughout the duration of the contract  
17 or contracts, with an update to the report each time there is a  
18 significant change in any of the information that the employer is  
19 required to report pursuant to this section, or other significant  
20 change in employment status, including, but not limited to, medical  
21 leave of 12 weeks or more, hiring, termination for any reason, a  
22 change in part-time or full-time status, or a change in “employee”  
23 or “contractor” status] Data regarding compensation and hours  
24 worked by employees shall be reported in the form by pay bands to  
25 be established by regulation promulgated by the commissioner. The  
26 commissioner may establish a standard presumption for the number  
27 of hours worked by a fulltime employee or by a part-time employee  
28 for whom an employer does not track actual hours worked. An  
29 employer shall provide a report for each establishment of the  
30 employer<sup>2</sup>.

31 b. Any employer, regardless of the location of the employer,  
32 who enters into a contract with a public body to perform any public  
33 work for the public body shall provide to the commissioner, through  
34 certified payroll records required pursuant to P.L.1963, c.150  
35 (C.34:11-56.25 et seq.), information regarding the gender, race, job  
36 title, occupational category, and rate of total compensation of every  
37 employee of the employer employed in the State in connection with  
38 the contract. The employer shall provide the commissioner,  
39 throughout the duration of the contract or contracts, with an update  
40 to the information whenever payroll records are required to be  
41 submitted pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

42 c. The commissioner shall retain the information provided by  
43 the employer during any period of time that one or more contracts  
44 are in effect between the employer and any public body and not less  
45 than five years after the end of that period. The retained  
46 employment information shall be made available by the  
47 commissioner to the Division on Civil Rights in the Department of

1 Law and Public Safety, and, upon request, provided to anyone who  
2 is or was an employee of the employer during the period of any of  
3 the contracts between the employer and any public body, or any  
4 authorized representative of the employee.

5 d. For the purposes of the section:

6 “Public body” means the State or any agency or instrumentality  
7 of the State;

8 “Public work” means public work as defined in section 2 of  
9 P.L.1963, c.150 (C.34:11-56.26) and which is subject to the  
10 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). Public work  
11 shall not include the provision of goods or products.

12 “Qualifying services” means the provision of any service to the  
13 State or to any other public body, except for public work as defined  
14 in section 2 of P.L.1963, c.150 (C.34:11-56.26).

15 “Service” means any act performed in exchange for payment,  
16 including the provision of professional services, but shall not  
17 include the sale of goods or products.

18

19 <sup>2</sup>[4.] 6.<sup>2</sup> This act shall take effect <sup>2</sup>[immediately] on July 1,  
20 2018<sup>2</sup>.