

STATE OF NEW YORK

3358

2017-2018 Regular Sessions

IN ASSEMBLY

January 27, 2017

Introduced by M. of A. GOTTFRIED, GLICK, O'DONNELL, TITONE, BRONSON, MORELLE, ROSENTHAL, DINOWITZ, COOK, HEVESI, KAVANAGH, CAHILL, ENGLE-BRIGHT, PAULIN, RYAN, ABINANTI, MOYA, SEPULVEDA, MOSLEY, ARROYO, PICHARDO, ORTIZ, ROZIC, WEPRIN, MAYER, BLAKE, JENNE, STECK, BICHOTTE, HUNTER, HARRIS, CARROLL -- Multi-Sponsored by -- M. of A. AUBRY, BENEDETTO, BRAUNSTEIN, BUCHWALD, DenDEKKER, FAHY, FARRELL, GALEF, GUNTHER, HOOPER, JAFFEE, LIFTON, LUPARDO, MAGNARELLI, McDONALD, OTIS, PEOPLES-STOKES, PERRY, PRETLOW, QUART, RAMOS, RIVERA, SEAWRIGHT, SIMON, SIMONTAS, SKARTADOS, SKOUFIS, SOLAGES, THIELE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, the civil rights law and the education law, in relation to prohibiting discrimination based on gender identity or expression; and to amend the penal law and the criminal procedure law, in relation to including offenses regarding gender identity or expression within the list of offenses subject to treatment as hate crimes

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

1 Section 1. Legislative findings and intent. The legislature reaffirms
2 that the state has the responsibility to act to assure that every indi-
3 vidual within this state is afforded an equal opportunity to enjoy a
4 full and productive life, and that the failure to provide such equal
5 opportunity, whether because of discrimination, prejudice, intolerance
6 or inadequate education, training, housing or health care not only
7 threatens the rights and proper privileges of its inhabitants, but
8 menaces the institutions and foundation of a free democratic state and
9 threatens the peace, order, health, safety and general welfare of the
10 state and its inhabitants.

11 The legislature further finds that many residents of this state have
12 encountered prejudice on account of their gender identity or expression,
13 and that this prejudice has severely limited or actually prevented

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

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A. 3358

1 access to employment, housing and other basic necessities of life, lead-
2 ing to deprivation and suffering. The legislature further recognizes
3 that this prejudice has fostered a general climate of hostility and

4 distrust, leading in some instances to physical violence against those
5 perceived to live in a gender identity or expression which is different
6 from that traditionally associated with the sex assigned to that person
7 at birth.

8 In so doing, the legislature makes clear its action is not intended to
9 promote any particular attitude, course of conduct or way of life. Rath-
10 er its purpose is to ensure that individuals who live in our free socie-
11 ty have the capacity to make their own choices, follow their own beliefs
12 and conduct their own lives as they see fit, consistent with existing
13 law.

14 The legislature further finds that, as court decisions have properly
15 held, New York's sex discrimination laws prohibit discrimination based
16 on gender stereotypes or because an individual has transitioned or
17 intends to transition from one gender to another. This legislation is
18 intended to codify this principle and to ensure that the public under-
19 stands that discrimination on the basis of gender identity and
20 expression is prohibited.

21 § 2. Subdivisions 1 and 2 of section 291 of the executive law, as
22 amended by chapter 196 of the laws of 2010, are amended to read as
23 follows:

24 1. The opportunity to obtain employment without discrimination because
25 of age, race, creed, color, national origin, sexual orientation, **gender**
26 **identity or expression**, military status, sex, marital status, or disa-
27 bility, is hereby recognized as and declared to be a civil right.

28 2. The opportunity to obtain education, the use of places of public
29 accommodation and the ownership, use and occupancy of housing accommo-
30 dations and commercial space without discrimination because of age,
31 race, creed, color, national origin, sexual orientation, **gender identity**
32 **or expression**, military status, sex, marital status, or disability, as
33 specified in section two hundred ninety-six of this article, is hereby
34 recognized as and declared to be a civil right.

35 § 3. Section 292 of the executive law is amended by adding a new
36 subdivision 35 to read as follows:

37 **35. The term "gender identity or expression" means a person's actual**
38 **or perceived gender-related identity, appearance, behavior, expression,**
39 **or other gender-related characteristic regardless of the sex assigned to**
40 **that person at birth, including, but not limited to, the status of being**
41 **transgender.**

42 § 4. Subdivisions 8 and 9 of section 295 of the executive law, as
43 amended by chapter 106 of the laws of 2003, are amended to read as
44 follows:

45 8. To create such advisory councils, local, regional or state-wide, as
46 in its judgment will aid in effectuating the purposes of this article
47 and of section eleven of article one of the constitution of this state,
48 and the division may empower them to study the problems of discrimi-
49 nation in all or specific fields of human relationships or in specific
50 instances of discrimination because of age, race, creed, color, national
51 origin, sexual orientation, **gender identity or expression**, military
52 status, sex, disability or marital status and make recommendations to
53 the division for the development of policies and procedures in general
54 and in specific instances. The advisory councils also shall disseminate
55 information about the division's activities to organizations and indi-
56 viduals in their localities. Such advisory councils shall be composed of
A. 3358

1 representative citizens, serving without pay, but with reimbursement for
2 actual and necessary traveling expenses; and the division may make

3 provision for technical and clerical assistance to such councils and for
4 the expenses of such assistance.

5 9. To develop human rights plans and policies for the state and assist
6 in their execution and to make investigations and studies appropriate to
7 effectuate this article and to issue such publications and such results
8 of investigations and research as in its judgement will tend to inform
9 persons of the rights assured and remedies provided under this article,
10 to promote good-will and minimize or eliminate discrimination because of
11 age, race, creed, color, national origin, sexual orientation, gender
12 identity or expression, military status, sex, disability or marital
13 status.

14 § 5. Paragraphs (a), (b), (c) and (d) of subdivision 1 of section 296
15 of the executive law, as amended by chapter 365 of the laws of 2015, are
16 amended to read as follows:

17 (a) For an employer or licensing agency, because of an individual's
18 age, race, creed, color, national origin, sexual orientation, gender
19 identity or expression, military status, sex, disability, predisposing
20 genetic characteristics, familial status, marital status, or domestic
21 violence victim status, to refuse to hire or employ or to bar or to
22 discharge from employment such individual or to discriminate against
23 such individual in compensation or in terms, conditions or privileges of
24 employment.

25 (b) For an employment agency to discriminate against any individual
26 because of age, race, creed, color, national origin, sexual orientation,
27 gender identity or expression, military status, sex, disability, predis-
28 posing genetic characteristics, familial status, or marital status, in
29 receiving, classifying, disposing or otherwise acting upon applications
30 for its services or in referring an applicant or applicants to an
31 employer or employers.

32 (c) For a labor organization, because of the age, race, creed, color,
33 national origin, sexual orientation, gender identity or expression,
34 military status, sex, disability, predisposing genetic characteristics,
35 familial status, or marital status of any individual, to exclude or to
36 expel from its membership such individual or to discriminate in any way
37 against any of its members or against any employer or any individual
38 employed by an employer.

39 (d) For any employer or employment agency to print or circulate or
40 cause to be printed or circulated any statement, advertisement or publi-
41 cation, or to use any form of application for employment or to make any
42 inquiry in connection with prospective employment, which expresses
43 directly or indirectly, any limitation, specification or discrimination
44 as to age, race, creed, color, national origin, sexual orientation,
45 gender identity or expression, military status, sex, disability, predis-
46 posing genetic characteristics, familial status, or marital status, or
47 any intent to make any such limitation, specification or discrimination,
48 unless based upon a bona fide occupational qualification; provided,
49 however, that neither this paragraph nor any provision of this chapter
50 or other law shall be construed to prohibit the department of civil
51 service or the department of personnel of any city containing more than
52 one county from requesting information from applicants for civil service
53 examinations concerning any of the aforementioned characteristics, other
54 than sexual orientation, for the purpose of conducting studies to iden-
55 tify and resolve possible problems in recruitment and testing of members
56 of minority groups to insure the fairest possible and equal opportu-

A. 3358

1 nities for employment in the civil service for all persons, regardless

2 of age, race, creed, color, national origin, sexual orientation or
3 gender identity or expression, military status, sex, disability, predis-
4 posing genetic characteristics, familial status, or marital status.

5 § 6. Paragraphs (b), (c) and (d) of subdivision 1-a of section 296 of
6 the executive law, as amended by chapter 365 of the laws of 2015, are
7 amended to read as follows:

8 (b) To deny to or withhold from any person because of race, creed,
9 color, national origin, sexual orientation, gender identity or
10 expression, military status, sex, age, disability, familial status, or
11 marital status, the right to be admitted to or participate in a guidance
12 program, an apprenticeship training program, on-the-job training
13 program, executive training program, or other occupational training or
14 retraining program;

15 (c) To discriminate against any person in his or her pursuit of such
16 programs or to discriminate against such a person in the terms, condi-
17 tions or privileges of such programs because of race, creed, color,
18 national origin, sexual orientation, gender identity or expression,
19 military status, sex, age, disability, familial status or marital
20 status;

21 (d) To print or circulate or cause to be printed or circulated any
22 statement, advertisement or publication, or to use any form of applica-
23 tion for such programs or to make any inquiry in connection with such
24 program which expresses, directly or indirectly, any limitation, spec-
25 ification or discrimination as to race, creed, color, national origin,
26 sexual orientation, gender identity or expression, military status, sex,
27 age, disability, familial status or marital status, or any intention to
28 make any such limitation, specification or discrimination, unless based
29 on a bona fide occupational qualification.

30 § 7. Paragraph (a) of subdivision 2 of section 296 of the executive
31 law, as amended by chapter 106 of the laws of 2003, is amended to read
32 as follows:

33 (a) It shall be an unlawful discriminatory practice for any person,
34 being the owner, lessee, proprietor, manager, superintendent, agent or
35 employee of any place of public accommodation, resort or amusement,
36 because of the race, creed, color, national origin, sexual orientation,
37 gender identity or expression, military status, sex, [~~or~~] disability or
38 marital status of any person, directly or indirectly, to refuse, with-
39 hold from or deny to such person any of the accommodations, advantages,
40 facilities or privileges thereof, including the extension of credit, or,
41 directly or indirectly, to publish, circulate, issue, display, post or
42 mail any written or printed communication, notice or advertisement, to
43 the effect that any of the accommodations, advantages, facilities and
44 privileges of any such place shall be refused, withheld from or denied
45 to any person on account of race, creed, color, national origin, sexual
46 orientation, gender identity or expression, military status, sex, [~~or~~]
47 disability or marital status, or that the patronage or custom thereof of
48 any person of or purporting to be of any particular race, creed, color,
49 national origin, sexual orientation, gender identity or expression,
50 military status, sex or marital status, or having a disability is unwel-
51 come, objectionable or not acceptable, desired or solicited.

52 § 8. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section
53 296 of the executive law, paragraphs (a), (b) and (c) as amended and
54 paragraph (c-1) as added by chapter 106 of the laws of 2003, are amended
55 to read as follows:

A. 3358

1 (a) To refuse to sell, rent or lease or otherwise to deny to or with-

2 hold from any person or group of persons such housing accommodations
3 because of the race, creed, color, disability, national origin, sexual
4 orientation, gender identity or expression, military status, age, sex,
5 marital status, or familial status of such person or persons, or to
6 represent that any housing accommodation or land is not available for
7 inspection, sale, rental or lease when in fact it is so available.

8 (b) To discriminate against any person because of his or her race,
9 creed, color, disability, national origin, sexual orientation, gender
10 identity or expression, military status, age, sex, marital status, or
11 familial status in the terms, conditions or privileges of any publicly-
12 assisted housing accommodations or in the furnishing of facilities or
13 services in connection therewith.

14 (c) To cause to be made any written or oral inquiry or record concern-
15 ing the race, creed, color, disability, national origin, sexual orien-
16 tation, gender identity or expression, membership in the reserve armed
17 forces of the United States or in the organized militia of the state,
18 age, sex, marital status, or familial status of a person seeking to rent
19 or lease any publicly-assisted housing accommodation; provided, however,
20 that nothing in this subdivision shall prohibit a member of the reserve
21 armed forces of the United States or in the organized militia of the
22 state from voluntarily disclosing such membership.

23 (c-1) To print or circulate or cause to be printed or circulated any
24 statement, advertisement or publication, or to use any form of applica-
25 tion for the purchase, rental or lease of such housing accommodation or
26 to make any record or inquiry in connection with the prospective
27 purchase, rental or lease of such a housing accommodation which
28 expresses, directly or indirectly, any limitation, specification or
29 discrimination as to race, creed, color, national origin, sexual orien-
30 tation, gender identity or expression, military status, sex, age, disa-
31 bility, marital status, or familial status, or any intent to make any
32 such limitation, specification or discrimination.

33 § 9. Subdivision 3-b of section 296 of the executive law, as amended
34 by chapter 106 of the laws of 2003, is amended to read as follows:

35 3-b. It shall be an unlawful discriminatory practice for any real
36 estate broker, real estate salesperson or employee or agent thereof or
37 any other individual, corporation, partnership or organization for the
38 purpose of inducing a real estate transaction from which any such person
39 or any of its stockholders or members may benefit financially, to repre-
40 sent that a change has occurred or will or may occur in the composition
41 with respect to race, creed, color, national origin, sexual orientation,
42 gender identity or expression, military status, sex, disability, marital
43 status, or familial status of the owners or occupants in the block,
44 neighborhood or area in which the real property is located, and to
45 represent, directly or indirectly, that this change will or may result
46 in undesirable consequences in the block, neighborhood or area in which
47 the real property is located, including but not limited to the lowering
48 of property values, an increase in criminal or anti-social behavior, or
49 a decline in the quality of schools or other facilities.

50 § 10. Subdivision 4 of section 296 of the executive law, as amended by
51 chapter 106 of the laws of 2003, is amended to read as follows:

52 4. It shall be an unlawful discriminatory practice for an education
53 corporation or association which holds itself out to the public to be
54 non-sectarian and exempt from taxation pursuant to the provisions of
55 article four of the real property tax law to deny the use of its facili-
56 ties to any person otherwise qualified, or to permit the harassment of

1 any student or applicant, by reason of his race, color, religion, disa-
2 bility, national origin, sexual orientation, gender identity or
3 expression, military status, sex, age or marital status, except that any
4 such institution which establishes or maintains a policy of educating
5 persons of one sex exclusively may admit students of only one sex.

6 § 11. Subdivision 5 of section 296 of the executive law, as amended by
7 chapter 106 of the laws of 2003, is amended to read as follows:

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

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

19 (2) To discriminate against any person because of race, creed, color,
20 national origin, sexual orientation, gender identity or expression,
21 military status, sex, age, disability, marital status, or familial
22 status in the terms, conditions or privileges of the sale, rental or
23 lease of any such housing accommodation or in the furnishing of facili-
24 ties or services in connection therewith.

25 (3) To print or circulate or cause to be printed or circulated any
26 statement, advertisement or publication, or to use any form of applica-
27 tion for the purchase, rental or lease of such housing accommodation or
28 to make any record or inquiry in connection with the prospective
29 purchase, rental or lease of such a housing accommodation which
30 expresses, directly or indirectly, any limitation, specification or
31 discrimination as to race, creed, color, national origin, sexual orien-
32 tation, gender identity or expression, military status, sex, age, disa-
33 bility, marital status, or familial status, or any intent to make any
34 such limitation, specification or discrimination.

35 The provisions of this paragraph (a) shall not apply (1) to the rental
36 of a housing accommodation in a building which contains housing accommo-
37 dations for not more than two families living independently of each
38 other, if the owner resides in one of such housing accommodations, (2)
39 to the restriction of the rental of all rooms in a housing accommodation
40 to individuals of the same sex or (3) to the rental of a room or rooms
41 in a housing accommodation, if such rental is by the occupant of the
42 housing accommodation or by the owner of the housing accommodation and
43 the owner resides in such housing accommodation or (4) solely with
44 respect to age and familial status to the restriction of the sale,
45 rental or lease of housing accommodations exclusively to persons sixty-
46 two years of age or older and the spouse of any such person, or for
47 housing intended and operated for occupancy by at least one person
48 fifty-five years of age or older per unit. In determining whether hous-
49 ing is intended and operated for occupancy by persons fifty-five years
50 of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the
51 federal Fair Housing Act of 1988, as amended, shall apply.

52 (b) It shall be an unlawful discriminatory practice for the owner,
53 lessee, sub-lessee, or managing agent of, or other person having the
54 right of ownership or possession of or the right to sell, rent or lease,