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**NEW JERSEY**

**LAW AGAINST DISCRIMINATION**

**N.J.S.A. 10:5-1 et seq.**

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**10:5-1. Short title**

This act shall be known as "Law Against Discrimination."

L.1945, c. 169, p. 589, s. 1, eff. April 16, 1945.

**10:5-2. Police power, enactment deemed exercise of**

The enactment hereof shall be deemed an exercise of the police power of the State for the protection of the public safety, health and morals and to promote the general welfare and in fulfillment of the provisions of the Constitution of this State guaranteeing civil rights.

L.1945, c. 169, p. 589, s. 2.

**10:5-2.1. Other laws unaffected**

Nothing contained in this act or in P.L. 1945, c. 169 (C. 10:5-1 et seq.) shall be construed to require or authorize any act prohibited by law, nor to prevent the award of a contract to a small business enterprise, minority business enterprise or women's business enterprise under P.L. 1985, c. 490 (C. 18A:18A-51 et seq.) nor to conflict with the provisions of chapter 2 (child labor) of Title 34 of the Revised Statutes, nor to require the employment of any person under the age of 18, nor to prohibit the establishment and maintenance of bona fide occupational qualifications or the establishment and maintenance of apprenticeship requirements based upon a reasonable minimum age, nor to prevent the termination or change of the employment of any person who in the opinion of the employer, reasonably arrived at, is unable to perform adequately the duties of employment, nor to preclude discrimination among individuals on the basis of competence, performance, conduct or any other reasonable standards, nor to interfere with the operation of the terms or conditions and administration of any bona fide retirement, pension, employee benefit or insurance plan or program, including any State or locally administered public retirement system, provided that the provisions of those plans or programs are not used to establish an age for mandatory retirement.

1962,c.37,s.8; amended 1980,c.90,s.16; 1985,c.73,s.2; 1985,c.490, s.10; 1988,c.37,s.9.

**10:5-2.2. Higher education exception**

Notwithstanding the provisions of section 1 of P.L. 1938, c. 295 (C. 10:3-1) and section 8 of P.L. 1962, c. 37 (C. 10:5-2.1), an employee who has attained 70 years of age who is serving under a contract of tenure or similar arrangement providing for tenure at a public or private institution of higher education may, at the option of the institution, be required to retire.

L. 1985, c. 73, s. 4, eff. Oct. 1, 1985.

**10:5-3 Findings, declarations.**

3. The Legislature finds and declares that practices of discrimination against any of its inhabitants, because of race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, disability or nationality, are matters of concern to the government of the State, and that such

discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State; provided, however, that nothing in this expression of policy prevents the making of legitimate distinctions between citizens and aliens when required by federal law or otherwise necessary to promote the national interest.

The Legislature further declares its opposition to such practices of discrimination when directed against any person by reason of the race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, liability for service in the Armed Forces of the United States, disability or nationality of that person or that person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, in order that the economic prosperity and general welfare of the inhabitants of the State may be protected and ensured.

The Legislature further finds that because of discrimination, people suffer personal hardships, and the State suffers a grievous harm. The personal hardships include: economic loss; time loss; physical and emotional stress; and in some cases severe emotional trauma, illness, homelessness or other irreparable harm resulting from the strain of employment controversies; relocation, search and moving difficulties; anxiety caused by lack of information, uncertainty, and resultant planning difficulty; career, education, family and social disruption; and adjustment problems, which particularly impact on those protected by this act. Such harms have, under the common law, given rise to legal remedies, including compensatory and punitive damages. The Legislature intends that such damages be available to all persons protected by this act and that this act shall be liberally construed in combination with other protections available under the laws of this State.

L.1945,c.169,s.3; amended 1951, c.64, s.2; 1962, c.37, s.2; 1970, c.80, s.8; 1977, c.96, s.1; 1990, c.12, s.1; 1991, c.519, s.1; 1992, c.146, s.1; 2003, c.180, s.3; 2006, c.100, s.2.

### **10:5-3.1 Findings, declarations relative to discrimination based on pregnancy, childbirth, related medical conditions.**

1. The Legislature finds and declares:

a. That pregnant women are vulnerable to discrimination in the workplace in New Jersey, as indicated in reports that women who request an accommodation that will allow them to maintain a healthy pregnancy, or who need a reasonable accommodation while recovering from childbirth, are being removed from their positions, placed on unpaid leave, or fired;

b. It is the intent of the Legislature to combat this form of discrimination by requiring employers to provide reasonable accommodations to pregnant women and those who suffer medical conditions related to pregnancy and childbirth, such as bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work; and

c. It is not the intent of the Legislature to require such accommodations if their provision would cause an undue hardship in the conduct of an employer's business.

L.2013, c.220, s.1.

**10:5-4 Obtaining employment and privileges without discrimination; civil right.**

4. All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.

L.1945, c.169, s.4; amended 1949, c.11, s.2; 1957, c.66, s.1; 1961, c.106, s.1; 1962, c.37, ss.3,9; 1970, c.80, s.9; 1991, c.519, s.2; 1992, c.146, s.2; 2002, c.82, s.1; 2003, c.180, s.4; 2006, c.100, s.3; 2017, c.184, s.1.

**10:5-4.1 Construction of act.**

2. All of the provisions of the act to which this act is a supplement shall be construed to prohibit any unlawful discrimination against any person because such person is or has been at any time disabled or any unlawful employment practice against such person, unless the nature and extent of the disability reasonably precludes the performance of the particular employment. It shall be unlawful discrimination under the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) to discriminate against any buyer or renter because of the disability of a person residing in or intending to reside in a dwelling after it is sold, rented or made available or because of any person associated with the buyer or renter.

L.1972,c.114,s.2; title amended 1978, c.137, s.1. amended 1978, c.137, s.2; 1992, c.146, s.3; 2003, c.180, s.5.

**10:5-5 Definitions relative to discrimination.**

5. As used in P.L.1945, c.169 (C.10:5-1 et seq.), unless a different meaning clearly appears from the context:

a. "Person" includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.

b. "Employment agency" includes any person undertaking to procure employees or opportunities for others to work.

c. "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

d. "Unlawful employment practice" and "unlawful discrimination" include only those unlawful practices and acts specified in section 11 of P.L.1945, c.169 (C.10:5-12).

e. "Employer" includes all persons as defined in subsection a. of this section unless otherwise

specifically exempt under another section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards, or bodies.

- f. "Employee" does not include any individual employed in the domestic service of any person.
- g. "Liability for service in the Armed Forces of the United States" means subject to being ordered as an individual or member of an organized unit into active service in the Armed Forces of the United States by reason of membership in the National Guard, naval militia or a reserve component of the Armed Forces of the United States, or subject to being inducted into such armed forces through a system of national selective service.
- h. "Division" means the "Division on Civil Rights" created by P.L.1945, c.169 (C.10:5-1 et seq.).
- i. "Attorney General" means the Attorney General of the State of New Jersey or the Attorney General's representative or designee.
- j. "Commission" means the Commission on Civil Rights created by P.L.1945, c.169 (C.10:5-1 et seq.).
- k. "Director" means the Director of the Division on Civil Rights.
- l. "A place of public accommodation" shall include, but not be limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation, or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage, any public conveyance operated on land or water or in the air or any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station; any dispensary, clinic, or hospital; any public library; and any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education or the Commissioner of Education of the State of New Jersey. Nothing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or post-secondary school from using in good faith criteria other than race, creed, color, national origin, ancestry, gender identity, or expression or affectional or sexual orientation in the admission of students.
- m. "A publicly assisted housing accommodation" shall include all housing built with public funds or public assistance pursuant to P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303, P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184, and all housing financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof.
- n. The term "real property" includes real estate, lands, tenements and hereditaments, corporeal and

incorporeal, and leaseholds, provided, however, that, except as to publicly assisted housing accommodations, the provisions of this act shall not apply to the rental: (1) of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence; or (2) of a room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence at the time of such rental. Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, in the sale, lease, or rental of real property, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. Nor does any provision under this act regarding discrimination on the basis of familial status apply with respect to housing for older persons.

o. "Real estate broker" includes a person, firm, or corporation who, for a fee, commission, or other valuable consideration, or by reason of promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting, or auctioning of any real estate, or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others; or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association, or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

p. "Real estate salesperson" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale, or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

q. "Disability" means physical or sensory disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impairment, or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological, or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological, or neurological conditions which prevents the typical exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

r. "Blind person" or "person who is blind" means any individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lens or whose visual acuity is better than 20/200 if accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

s. "Guide dog" means a dog used to assist persons who are deaf, or which is fitted with a special harness so as to be suitable as an aid to the mobility of a person who is blind, and is used by a person who is blind and has satisfactorily completed a specific course of training in the use of such a dog, and has been trained by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities, including, but not limited to, those persons who are blind or deaf, as reputable and competent to provide dogs with training of this type.

t. "Guide or service dog trainer" means any person who is employed by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities, including, but not limited to, those persons who are blind, have visual impairments, or are deaf or have hearing impairments, as reputable and competent to provide dogs with training, as defined in this section, and who is actually involved in the training process.

u. "Housing accommodation" means any publicly assisted housing accommodation or any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

v. "Public facility" means any place of public accommodation and any street, highway, sidewalk, walkway, public building, and any other place or structure to which the general public is regularly, normally, or customarily permitted or invited.

w. "Deaf person" or "person who is deaf" means any person whose hearing is so severely impaired that the person is unable to hear and understand conversational speech through the unaided ear alone, and who must depend primarily on an assistive listening device or visual communication such as writing, lip reading, sign language, and gestures.

x. "Atypical hereditary cellular or blood trait" means sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic fibrosis trait.

y. "Sickle cell trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests.

z. "Hemoglobin C trait" means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in normal proportions by standard chemical and physical analytic tests.

aa. "Thalassemia trait" means the presence of the thalassemia gene which in combination with another similar gene results in the chronic hereditary disease Cooley's anemia.

bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene which in combination with another similar gene results in the chronic hereditary disease Tay-Sachs.

cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis gene which in combination with another similar gene results in the chronic hereditary disease cystic fibrosis.

dd. "Service dog" means any dog individually trained to the requirements of a person with a disability including, but not limited to minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items. This term shall include a "seizure dog" trained to alert or otherwise assist persons with epilepsy or other seizure disorders.

ee. "Qualified Medicaid applicant" means an individual who is a qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

ff. "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

gg. "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

hh. "Affectional or sexual orientation" means male or female heterosexuality, homosexuality, or bisexuality by inclination, practice, identity, or expression, having a history thereof or being perceived, presumed, or identified by others as having such an orientation.

ii. "Heterosexuality" means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the other gender.

jj. "Homosexuality" means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the same gender.

kk. "Bisexuality" means affectional, emotional, or physical attraction or behavior which is directed towards persons of either gender.

ll. "Familial status" means being the natural parent of a child, the adoptive parent of a child, the resource family parent of a child, having a "parent and child relationship" with a child as defined by State law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child, or any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

mm. "Housing for older persons" means housing:

(1) provided under any State program that the Attorney General determines is specifically designed and operated to assist persons who are elderly (as defined in the State program); or provided under any federal program that the United States Department of Housing and Urban Development determines is specifically designed and operated to assist persons who are elderly (as defined in the federal program); or

(2) intended for, and solely occupied by, persons 62 years of age or older; or

(3) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this paragraph, the Attorney General shall adopt regulations which require at least the following factors:

(a) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(b) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(c) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Housing shall not fail to meet the requirements for housing for older persons by reason of: persons residing in such housing as of September 13, 1988 not meeting the age requirements of this subsection, provided that new occupants of such housing meet the age requirements of this subsection; or unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of this subsection.

nn. "Genetic characteristic" means any inherited gene or chromosome, or alteration thereof, that is scientifically or medically believed to predispose an individual to a disease, disorder, or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder, or syndrome.

oo. "Genetic information" means the information about genes, gene products, or inherited characteristics that may derive from an individual or family member.

pp. "Genetic test" means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to identify a predisposing genetic characteristic.

qq. "Domestic partnership" means a domestic partnership established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

rr. "Gender identity or expression" means having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth.

ss. "Civil Union" means a legally recognized union of two eligible individuals established pursuant to R.S.37:1-1 et seq. and P.L.2006, c.103 (C.37:1-28 et al.).

tt. "Premium wages" means additional remuneration for night, weekend, or holiday work, or for standby or irregular duty.

uu. "Premium benefit" means an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due the employee for an equivalent period of work performed during the regular work schedule of the employee.

vv. "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles.

ww. "Protective hair styles" includes, but is not limited to, such hairstyles as braids, locks, and twists.

L.1945, c.169, s.5; amended 1949, c.11, s.3; 1951, c.64, s.3; 1957, c.66, s.2; 1961, c.106, s.2; 1963, c.40, s.1; 1966, c.17, s.1; 1966, c.254, s.1; 1972, c.114, s.1; 1977, c.122, s.1; 1977, c.456, s.1; 1978, c.137, s.3; 1979, c.86, s.1; 1980, c.46, s.4; 1981, c.185, s.1; 1983, c.485, s.3; 1985, c.303, s.1; 1986, c.8, s.1; 1991, c.493; 1991, c.519, s.3; 1992, c.146, s.4; 1996, c.126, s.4; 2003, c.180, s.6; 2003, c.246, s.11; 2003, c.293; 2004, c.130, s.37; 2006, c.100, s.4; 2006, c.103, s.87; 2007, c.325, s.1; 2009, c.205; 2017, c.131, s.8.

### **10:5-5.1. Division to be known as "Division on Civil Rights"**

The Division against Discrimination shall be known as the "Division on Civil Rights."

L.1960, c. 59, p. 491, s. 3, eff. June 21, 1960.

### **10:5-6. Division on Civil Rights created; powers.**

6. There is created in the Department of Law and Public Safety a division known as "The Division on Civil Rights" with power to prevent and eliminate discrimination in the manner prohibited by this act against persons because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender identity or expression, familial status, nationality, disability, or sex or because of their liability for service in the Armed Forces of the United States, by employers, labor organizations, employment agencies or other persons and to take other actions against discrimination because of race, creed, color, national origin, ancestry, marital status, sex, familial status, nationality, disability, or age or because of their liability for service in the Armed Forces of the United States, as herein provided; and the division created hereunder is given general jurisdiction and authority for such purposes.

L.1945,c.169,s.6; amended 1951, c.64, s.4; 1961, c.106, s.3; 1962, c.37, ss.4,9; 1963, c.40, s.2; 1970, c.80, s.10; 1991, c.519, s.4; 1992, c.146, s.5; 2003, c.180, s.7; 2006, c.100, s.5.

### **10:5-7. Composition of division; commission; membership; appointment; term; vacancies; compensation**

The said division shall consist of the Attorney General and the commission. The commission shall consist of 7 members; each member shall be appointed by the Governor, with the advice and consent of the Senate, for a term of 5 years and until his successor is appointed and qualified, except that of those first appointed, one shall be appointed for a term of 1 year, one for a term of 2 years, one for a term of 3 years and 2 for a term of 4 years. Vacancies caused other than by expiration of term shall be filled in the same manner but for the unexpired term only. Members of the commission shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties. The first chairman of the commission shall be designated by the Governor and thereafter, the chairman shall be elected by the members, annually.

L.1945, c. 169, p. 590, s. 7. Amended by L.1949, c. 11, p. 40, s. 4; L.1963, c. 40, s. 3.

**10:5-8 Attorney General's powers and duties.**

8. The Attorney General shall:
  - a. Exercise all powers of the division not vested in the commission.
  - b. Administer the work of the division.
  - c. Organize the division into sections, which shall include but not be limited to a section which shall receive, investigate, and act upon complaints alleging discrimination against persons because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender identity or expression, familial status, disability, nationality or sex or because of their liability for service in the Armed Forces of the United States; and another which shall, in order to eliminate prejudice and to further good will among the various racial and religious and nationality groups in this State, study, recommend, prepare and implement, in cooperation with such other departments of the State Government or any other agencies, groups or entities both public and private, such educational and human relations programs as are consonant with the objectives of this act; and prescribe the organization of said sections and the duties of his subordinates and assistants.
  - d. Appoint a Director of the Division on Civil Rights, who shall act for the Attorney General, in the Attorney General's place and with the Attorney General's powers, which appointment shall be subject to the approval of the commission and the Governor, a deputy director and such assistant directors, field representatives and assistants as may be necessary for the proper administration of the division and fix their compensation within the limits of available appropriations. The director, deputy director, assistant directors, field representatives and assistants shall not be subject to the Civil Service Act and shall be removable by the Attorney General at will.
  - e. Appoint such clerical force and employees as the Attorney General may deem necessary and fix their duties, all of whom shall be subject to the Civil Service Act.
  - f. Maintain liaison with local and State officials and agencies concerned with matters related to the work of the division.
  - g. Adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this act.
  - h. Conduct investigations, receive complaints and conduct hearings thereon other than those complaints received and hearings held pursuant to the provisions of this act.
  - i. In connection with any investigation or hearing held pursuant to the provisions of this act, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person, under oath, and, in connection therewith, require the production for examination of any books or papers relating to any subject matter under investigation or in question by the division and conduct such discovery procedures which may include the taking of interrogatories and oral depositions as shall be deemed necessary by the Attorney General in any investigation. The Attorney General may make rules as to the issuance of subpoenas by the director. The failure of any witness when duly subpoenaed to attend, give testimony, or produce evidence shall be punishable by the Superior Court of New Jersey in the same manner as such failure is punishable by such court in a case therein pending.

j. Issue such publications and such results of investigations and research tending to promote good will and to minimize or eliminate discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender identity or expression, familial status, disability, nationality or sex, as the commission shall direct, subject to available appropriations.

k. Render each year to the Governor and Legislature a full written report of all the activities of the division.

l. Appoint, subject to the approval of the commission, a panel of not more than five hearing examiners, each of whom shall be duly licensed to practice law in this State for a period of at least five years, and each to serve for a term of one year and until his successor is appointed, any one of whom the director may designate in his place to conduct any hearing and recommend findings of fact and conclusions of law. The hearing examiners shall receive such compensation as may be determined by the Attorney General, subject to available appropriations.

L.1945,c.169,s.8; amended 1947, c.155, s.1; 1949, c.11, s.5; 1951, c.64, s.5; 1960, c.59, s.1; 1962, c.37, ss.5,9; 1963, c.40, s.4; 1966, c.17, s.2; 1970, c.80, s.11; 1991, c.519, s.5; 1992, c.146, s.6; 2003, c.180, s.8; 2006, c.100, s.6.

### **10:5-8.1 Preparation of statement by Attorney General.**

6. a. The Attorney General shall prepare a statement notifying landlords that the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1et seq.), as amended by P.L.2002, c.82, prohibits discrimination against tenants based on the source of income being used for rental or mortgage payments. In addition, the notification shall include instructions for those wishing to report such discrimination to the Division on Civil Rights.

b. Each agency or entity authorized to issue federal rental assistance vouchers to eligible tenants shall include a copy of the notification required pursuant to subsection a. of this section when issuing such a voucher.

L.2002,c.82,s.6.

### **10:5-9.1 Enforcement of laws against discrimination in public housing and real property.**

1. The Division on Civil Rights in the Department of Law and Public Safety shall enforce the laws of this State against discrimination in housing built with, or leased with the assistance of, public funds or public assistance, pursuant to any law, and in real property, as defined in the law hereby supplemented, because of race, religious principles, color, national origin, ancestry, marital status, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments. The said laws shall be so enforced in the manner prescribed in the act to which this act is a supplement.

L.1954, c.198, s.1; amended 1961, c.106, s.5; 1963, c.40, s.18; 1970, c.80, s.12; 1991, c.519, s.6; 1992, c.146, s.7; 2002, c.82, s.2; 2003, c.180, s.9; 2006, c.100, s.7; 2017, c.184, s.2.

**10:5-9.2 Division on Civil Rights qualified as "certified agency."**

13. The provisions of this amendatory and supplementary act, P.L.1992, c.146 (C.10:5-12.4 et al.), and P.L.2003, c.180, are intended to permit the Division on Civil Rights in the Department of Law and Public Safety to qualify as a "certified agency" within the meaning of the Federal Fair Housing Amendments Act, Pub.L. 100-430 (42 U.S.C. s.3610 (f)), and shall be construed as consistent with that purpose. Nothing in P.L.1992, c.146 (C.10:5-12.4 et al.) and P.L.2003, c.180, shall be construed to permit conduct prohibited by the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), prior to the effective date of P.L.2003, c.180.

L.1992,c.146,s.13; amended 2003, c.180, s.10.

**10:5-10 Commission's powers and duties; local commissions.**

9. The commission shall:

- a. Consult with and advise the Attorney General with respect to the work of the division.
- b. Survey and study the operations of the division.
- c. Report to the Governor and the Legislature with respect to such matters relating to the work of the division and at such times as it may deem in the public interest.

The mayors or chief executive officers of the municipalities in the State may appoint local commissions on civil rights to aid in effectuating the purposes of this act. Such local commissions shall be composed of representative citizens serving without compensation. Such commissions shall attempt to foster through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the inhabitants of the community, and they may be empowered by the local governing bodies to make recommendations to them for the development of policies and procedures in general and for programs of formal and informal education that will aid in eliminating all types of discrimination based on race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender identity or expression, familial status, disability, nationality or sex.

L.1945,c.169,s.9; amended 1949, c.11, s.6; 1962, c.37, ss.6,9; 1963, c.40, s.5; 1970, c.80, s.13; 1991, c.519, s.7; 1992, c.146, s.8; 2003, c.180, s.11; 2006, c.100, s.8.

**10:5-11. Evidence in obedience to summons; immunity of witnesses**

No person shall be excused from attending and testifying or from producing records, correspondence, documents or other evidence in obedience to the subpoena of the Attorney General, director, or hearing examiner on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence. But he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering, or failing to answer, or in producing or failing to produce evidence in accordance with the subpoena, and any such testimony given or evidence produced shall be admissible against him in any

proceeding concerning such perjury or contempt. The immunity herein provided shall extend only to natural persons so compelled to testify.

L.1945, c. 169, p. 593, s. 10. Amended by L.1963, c. 40, s. 6; L.1966, c. 17, s. 3, eff. April 7, 1966.

### **10:5-12 Unlawful employment practices, discrimination.**

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

a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, to refuse to hire or employ or to bar or to discharge or require to retire, unless justified by lawful considerations other than age, from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment; provided, however, it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification, reasonably necessary to the normal operation of the particular business or enterprise; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years of age; provided further that it shall not be an unlawful employment practice for a club exclusively social or fraternal to use club membership as a uniform qualification for employment, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee; provided further, that it shall not be an unlawful employment practice to require the retirement of any employee who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if that employee is entitled to an immediate non-forfeitable annual retirement benefit from a pension, profit sharing, savings or deferred retirement plan, or any combination of those plans, of the employer of that employee which equals in the aggregate at least \$27,000.00; and provided further that an employer may restrict employment to citizens of the United States where such restriction is required by federal law or is otherwise necessary to protect the national interest.

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

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

For the purposes of this subsection, an unlawful employment practice occurs, with respect to discrimination in compensation or in the financial terms or conditions of employment, each occasion that an individual is affected by application of a discriminatory compensation decision or other practice, including, but not limited to, each occasion that wages, benefits, or other compensation are paid, resulting

in whole or in part from the decision or other practice.

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

Nothing in this subsection shall prohibit the application of the doctrine of "continuing violation" or the "discovery rule" to any appropriate claim as those doctrines currently exist in New Jersey common law. It shall be an unlawful employment practice to require employees or prospective employees to consent to a shortened statute of limitations or to waive any of the protections provided by the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

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

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

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

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

f. (1) For any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof, or directly or indirectly to publish, circulate, issue, display, post or mail any written or

printed communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, or privileges of any such place will be refused, withheld from, or denied to any person on account of the race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality of such person, or that the patronage or custom thereof of any person of any particular race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding status, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality is unwelcome, objectionable or not acceptable, desired or solicited, and the production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained herein shall be construed to bar any place of public accommodation which is in its nature reasonably restricted exclusively to individuals of one sex, and which shall include but not be limited to any summer camp, day camp, or resort camp, bathhouse, dressing room, swimming pool, gymnasium, comfort station, dispensary, clinic or hospital, or school or educational institution which is restricted exclusively to individuals of one sex, provided individuals shall be admitted based on their gender identity or expression, from refusing, withholding from or denying to any individual of the opposite sex any of the accommodations, advantages, facilities or privileges thereof on the basis of sex; provided further, that the foregoing limitation shall not apply to any restaurant as defined in R.S.33:1-1 or place where alcoholic beverages are served.

(2) Notwithstanding the definition of "a place of public accommodation" as set forth in subsection l. of section 5 of P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor, manager, superintendent, agent, or employee of any private club or association to directly or indirectly refuse, withhold from or deny to any individual who has been accepted as a club member and has contracted for or is otherwise entitled to full club membership any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any member in the furnishing thereof on account of the race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity, or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality of such person.

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

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

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

(2) To discriminate against any person or group of persons because of race, creed, color, national

origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental or lease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

m. For any person to:

(1) Grant or accept any letter of credit or other document which evidences the transfer of funds or credit, or enter into any contract for the exchange of goods or services, where the letter of credit, contract, or other document contains any provisions requiring any person to discriminate against or to certify that he, she or it has not dealt with any other person on the basis of the race, creed, color, national origin, ancestry, age, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, marital status, civil union status, domestic partnership status, disability, liability for service in the Armed Forces of the United States, or nationality of such other person or of such other person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

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

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

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

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

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

o. For any multiple listing service, real estate brokers' organization or other service, organization or facility related to the business of selling or renting dwellings to deny any person access to or membership or participation in such organization, or to discriminate against such person in the terms or conditions of such access, membership, or participation, on account of race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, familial status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality.

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

q. (1) For any employer to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would

require a person to violate or forego a sincerely held religious practice or religious observance, including but not limited to the observance of any particular day or days or any portion thereof as a Sabbath or other holy day in accordance with the requirements of the religion or religious belief, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's religious observance or practice without undue hardship on the conduct of the employer's business. Notwithstanding any other provision of law to the contrary, an employee shall not be entitled to premium wages or premium benefits for work performed during hours to which those premium wages or premium benefits would ordinarily be applicable, if the employee is working during those hours only as an accommodation to his religious requirements. Nothing in this subsection q. shall be construed as reducing:

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

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

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

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

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

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

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

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

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

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

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

r. For any employer to take reprisals against any employee for requesting from , discussing with, or disclosing to, any other employee or former employee of the employer, a lawyer from whom the employee seeks legal advice, or any government agency information regarding the job title, occupational category, and rate of compensation, including benefits, of the employee or any other employee or former employee of the employer, or the gender, race, ethnicity, military status, or national origin of the employee or any other employee or former employee of the employer, regardless of whether the request was responded to , or to require, as a condition of employment, any employee or prospective employee to sign a waiver, or to otherwise require an employee or prospective employee to agree, not to make those requests or disclosures. Nothing in this subsection shall be construed to require an employee to disclose such information about the employee herself to any other employee or former employee of the employer or to any authorized representative of the other employee or former employee.

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

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

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

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

t. For an employer to pay any of its employees who is a member of a protected class at a rate of compensation, including benefits, which is less than the rate paid by the employer to employees who are not members of the protected class for substantially similar work, when viewed as a composite of skill, effort and responsibility. An employer who is paying a rate of compensation in violation of this subsection shall not reduce the rate of compensation of any employee in order to comply with this subsection. An employer may pay a different rate of compensation only if the employer demonstrates that the differential is made pursuant to a seniority system, a merit system, or the employer demonstrates:

- (1) That the differential is based on one or more legitimate, bona fide factors other than the characteristics of members of the protected class, such as training, education or experience, or the quantity or quality of production;
- (2) That the factor or factors are not based on, and do not perpetuate, a differential in compensation based on sex or any other characteristic of members of a protected class;
- (3) That each of the factors is applied reasonably;
- (4) That one or more of the factors account for the entire wage differential; and
- (5) That the factors are job-related with respect to the position in question and based on a legitimate business necessity. A factor based on business necessity shall not apply if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.

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

L.1945, c.169, s.11; amended 1949, c.11, s.7; 1951, c.64, s.6; 1961, c.106, s.4; 1962, c.37, ss.7,9; 1962, c.175; 1966, c.17, s.4; 1970, c.80, s.14; 1973, c.276; 1975, c.35; 1977, c.96, s.2; 1977, c.122, s.2; 1979, c.86, s.2; 1981, c.185, s.2; 1985, c.73, s.3; 1991, c.519, s.8; 1992, c.146, s.9; 1996, c.126, s.5; 1997, c.179; 2002, c.82, s.3; 2003, c.180, s.12; 2003, c.246, s.12; 2006, c.100, s.9; 2006, c.103, s.88; 2007, c.325, s.2; 2013, c.154; 2013, c.220, s.2; 2017, c.184, s.3; 2017, c.263; 2018, c.9, s.2.

### **10:5-12.1 Reinstatement, back pay.**

5. Notwithstanding any provision of law to the contrary, relief for having been required to retire in violation of the provisions of section 11 of P.L.1945, c. 169 (C.10:5-12), shall be available to the person aggrieved by that violation solely through the procedure initiated by filing a complaint with the Attorney General under the provisions of P.L.1945, c. 169 (C.10:5-1 et seq.).

Notwithstanding any provision to the contrary of section 16 of P.L.1945, c. 169 (C.10:5-17) or any other law, relief ordered for or granted to a person in connection with the person being required to retire in violation of the provisions of section 11 of P.L.1945, c. 169 (C.10:5-12) shall be limited to the person's reinstatement with back pay and interest.

This section shall not apply to a violation regarding an inquiry as to an applicant's salary history pursuant to section 2 of P.L.2019, c.199 (C.10:4-12.12).

L.1985, c.73, s.5; amended 2019, c.199, s.3.

### **10:5-12.2. Unlawful discrimination against Medicaid applicants, recipients of public assistance**

It shall be an unlawful discrimination for any skilled nursing or intermediate care facility which is a Medicaid provider pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and whose Medicaid occupancy level is less than the Statewide occupancy level, to deny admission to a qualified Medicaid applicant or a recipient of public assistance under P.L.1947, c.156 (C.44:8-107 et seq.) when a nursing home bed becomes available; except that this requirement shall not be construed to apply to the transfer of a resident from a residential unit to a nursing care unit within a facility, as defined by regulation, or prohibit a life care community, as defined by regulation, from contracting with its own residents for prior rights to beds in the nursing care unit of the community. The Commissioner of Human Services shall modify this requirement based on the licensed bed capacity and the financial condition of a facility but in no case shall the Medicaid occupancy level of that facility be less than 35%. The commissioner shall by September 1 of each year provide the Institutions, Health and Welfare Committee of the Senate, the Corrections, Health and Human Services Committee of the General Assembly, and the Governor with a report stating in specific detail the adverse financial condition of each facility exempted from this requirement. The criteria used by the commissioner to modify this requirement shall be contained in regulations which he shall adopt pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and a list of all skilled nursing or intermediate care facilities granted a modification by the commissioner shall be published in the New Jersey Register within one month of the commissioner's granting of the modification. Nothing in this section shall be construed to prohibit a religiously affiliated skilled nursing or intermediate care facility from utilizing religious affiliation as a uniform qualification for admission.

For the purpose of this subsection and section 3 of this amendatory and supplementary act, "Statewide occupancy level" means 45% of the total number of licensed beds in a skilled nursing or intermediate care facility for the first year following the effective date of this amendatory and supplementary act. For each year thereafter, the Commissioner of Human Services shall annually determine the Statewide occupancy level based on the commissioner's projection of the need for nursing facility bed space for qualified Medicaid applicants for that year, but the level shall not be less than 45%. Upon making the determination of what the Statewide occupancy level shall be for the next year, the commissioner shall promptly notify the members of the Senate Institutions, Health and Welfare Committee and General Assembly Corrections, Health and Human Services Committee, in writing, about the proposed level and the commissioner's rationale for so determining the level. After notifying the committee members, the commissioner shall adopt the Statewide occupancy level by regulation pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

For the purpose of this section and section 3 of this amendatory and supplementary act, "Medicaid

occupancy level" means the average number of Medicaid recipients and recipients of public assistance under P.L.1947, c.156 (C.44:8-107 et seq.) residing in a skilled nursing or intermediate care facility divided by the total number of licensed beds in the facility during that month. The Department of Human Services shall compile this information on a monthly basis and it shall be made available to the public upon request. This information shall be provided to the Division on Civil Rights on a monthly basis.

L.1985,c.303; amended 1987,c.367.

### **10:5-12.3. Report of admission denial**

A person or agency having knowledge that a skilled nursing or intermediate care facility whose Medicaid occupancy level is less than the Statewide occupancy level has denied admission to a qualified Medicaid applicant shall promptly report this information to the Division on Civil Rights of the Department of Law and Public Safety.

L. 1985, c. 303, s. 3.

### **10:5-12.4 Failure to use barrier free housing standards, unlawful discrimination.**

11. A failure to design and construct any multi-family dwelling of four units or more in accordance with barrier free standards promulgated by the Commissioner of Community Affairs pursuant to section 5 of P.L.1975, c.217 (C.52:27D-123) shall be an unlawful discrimination. The Commissioner of Community Affairs shall ensure that standards established meet or exceed the standards established under the federal "Fair Housing Amendments Act of 1988," Pub. L.100-430. Whenever the Attorney General receives a complaint alleging an unlawful discrimination pursuant to this section, the Attorney General shall refer the complaint to the Commissioner of Community Affairs for a determination and report as to whether there is a violation of such standards. Following receipt of the report, a complaint alleging an unlawful discrimination pursuant to this section shall be investigated and prosecuted in accordance with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.). Nothing in this section shall be construed to limit any enforcement authority of the Commissioner of Community Affairs or the Attorney General otherwise provided by law. Nothing in the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and P.L.1971, c.269 (C.52:32-4 et seq.) shall be deemed to limit the powers of the Attorney General under this act. The Attorney General and the Commissioner of Community Affairs shall adopt regulations to effectuate the purposes of this section.

L.1992,c.146,s.11; amended 2003, c.72, s.1.

### **10:5-12.5 Regulation of land use, housing, unlawful discrimination.**

12. a. It shall be an unlawful discrimination for a municipality, county or other local civil or political subdivision of the State of New Jersey, or an officer, employee, or agent thereof, to exercise the power to regulate land use or housing in a manner that discriminates on the basis of race, creed, color, national origin, ancestry, marital status, familial status, sex, gender identity or expression, liability for service in the Armed Forces of the United States, nationality or disability.

b. Notwithstanding the provisions of section 12 of P.L.1945, c.169 (C.10:5-13) any person claiming to be aggrieved by an unlawful discrimination under this section shall enforce this section by private right of

action in Superior Court. This section shall not apply to discrimination in housing owned or managed by a municipality, county or other local civil or political subdivision of the State of New Jersey where such discrimination is otherwise prohibited by section 11 of P.L.1945, c.169 (C.10:5-12).

L.1992, c.146, s.12; amended 2003, c.180, s.13; 2006, c.100, s.10; 2017, c.184, s.4.

### **10:5-12.6 Liability imposed on employers who discharge, discriminate against employee who displays the American flag.**

1. No employer, public or private, shall discharge or discriminate against an employee in compensation or in terms, conditions or privileges of employment for displaying the American flag on the employee's person or work station, provided the display does not substantially and materially interfere with the employee's job duties. An employer who discharges or discriminates against an employee as described in this section shall be liable to the employee for damages caused by the discharge or discrimination, including punitive damages, and for reasonable attorney's fees as part of the costs of any action for damages. If the court determines that the action for damages was brought without substantial justification, the court may award costs and reasonable attorney's fees to the employer.

L.2001,c.385.

### **10:5-12.7 Certain waivers in employment contract deemed against public policy and unenforceable.**

1. a. A provision in any employment contract that waives any substantive or procedural right or remedy relating to a claim of discrimination, retaliation, or harassment shall be deemed against public policy and unenforceable.

b. No right or remedy under the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute or case law shall be prospectively waived.

c. This section shall not apply to the terms of any collective bargaining agreement between an employer and the collective bargaining representative of the employees.

L.2019, c.39, s.1.

### **10:5-12.8 Certain provisions in employment contract, settlement agreement deemed against public policy and unenforceable.**

2. a. A provision in any employment contract or settlement agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment (hereinafter referred to as a "non-disclosure provision") shall be deemed against public policy and unenforceable against a current or former employee (hereinafter referred to as an "employee") who is a party to the contract or settlement. If the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable, then the non-disclosure provision shall also be unenforceable against the employer.

b. Every settlement agreement resolving a discrimination, retaliation, or harassment claim by an employee against an employer shall include a bold, prominently placed notice that although the parties

may have agreed to keep the settlement and underlying facts confidential, such a provision in an agreement is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable.

c. Notwithstanding any other provision of law to the contrary, this section shall not be construed to prohibit an employer from requiring an employee to sign an agreement:

(1) in which the employee agrees not to enter into competition with the employer during or after employment; or

(2) in which the employee agrees not to disclose proprietary information, which includes only non-public trade secrets, business plan and customer information.

L.2019, c.39, s.2.

### **10:5-12.9 Liability for enforcing, attempting to enforce provision deemed against public policy, unenforceable.**

3. A person who enforces or attempts to enforce a provision deemed against public policy and unenforceable pursuant to P.L.2019, c.39 (C.10:5-12.7 et seq.) shall be liable for the employee's reasonable attorney fees and costs.

L.2019, c.39, s.3.

### **10:5-12.10 Retaliatory actions prohibited.**

4. No person shall take any retaliatory action, including but not limited to failure to hire, discharge, suspension, demotion, discrimination in the terms, conditions, or privileges of employment, or other adverse action, against a person, on grounds that the person does not enter into an agreement or contract that contains a provision deemed against public policy and unenforceable pursuant to P.L.2019, c.39 (C.10:5-12.7 et seq.).

L.2019, c.39, s.4.

### **10:5-12.11 Grievances, actions.**

5. Any person claiming to be aggrieved by a violation of P.L.2019, c.39 (C.10:5-12.7 et seq.) may initiate suit in Superior Court. An action pursuant to this section shall be commenced within two years next after the cause of any such action shall have accrued. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any provided by P.L.2019, c.39 (C.10:5-12.7 et seq.) or any other statute. A prevailing plaintiff shall be awarded reasonable attorney fees and costs.

L.2019, c.39, s.5.

### **10:5-12.12 Unlawful employment practice; member of protected class.**

2. a. Except as otherwise provided by section 1 of P.L.2019, c.199 (C.34:6B-20), if a job applicant is a member of a protected class as defined in subsection t. of section 11 of P.L.1945, c.169 (C.10:5-12), it

shall be an unlawful employment practice in violation of P.L.1945, c.169 (C.10:5-1 et seq.) for an employer:

(1) to screen a job applicant based on the applicant's salary history, including, but not limited to, the applicant's prior wages, salaries, or benefits; or

(2) to require that the applicant's salary history satisfy any minimum or maximum criteria.

b. An award of punitive damages shall not be an available remedy for a violation of this section.

L.2019, c.199, s.2.

### **10:5-13 Filing complaint; prosecution; jury trial; damages.**

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

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

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

A party to an action based upon a violation of this act shall mail a copy of the initial pleadings or claims, amended pleadings or claims, counterclaims, briefs, and legal memoranda to the division at the same time as filing such documents with the Office of Administrative Law or the court. Upon application

to the Office of Administrative Law or to the court wherein the matter is pending, the division shall be permitted to intervene.

L.1945, c.169, s.12; amended 1949, c.11, s.8; 1960, c.59, s.2; 1963, c.40, s.7; 1979, c.404, s.1; 1990, c.12, s.2; 2018, c.9, s.3.

### **10:5-14. Investigation of complaint; Attorney General's duties.**

13. After the filing of any complaint, the Attorney General shall cause prompt investigation to be made in connection therewith and advise the complainant of the results thereof. During the period beginning with the filing of such complaint and ending with the closure of the case or 45 days from the date of a finding of probable cause, the Attorney General shall, to the extent feasible, engage in conciliation with respect to such complaint. Neither the Attorney General nor any officer or employee of the division shall disclose any conversation between the Attorney General or a representative and the respondent or a representative at such conference, except that the Attorney General and any officer or employee may disclose the terms of a settlement offer to the complainant or other aggrieved person on whose behalf the complaint was filed.

L.1945,c.169,s.13; amended 1949, c.11, s.9; 1963, c.40, s.8; 1966, c.17, s.5; 1990, c.12, s.3; 1992, c.146, s.10; 2003, c.180, s.14.

#### **10:5-14.1. Enforcement of act; summary proceedings**

At any time after the filing of any complaint the Attorney General may proceed against any person in a summary manner in the Superior Court of New Jersey to compel compliance with any of the provisions of this act, or to prevent violations or attempts to violate any such provisions, or attempts to interfere with or impede the enforcement of any such provisions or the exercise or performance of any power or duty thereunder.

L.1966, c. 17, s. 6.

##### **10:5-14.1a. Penalties; disposition**

2. Any person who violates any of the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), shall, in addition to any other relief or affirmative action provided by law, be liable for the following penalties:

a. In an amount not exceeding \$10,000 if the respondent has not been adjudged to have committed any prior violation within the five-year period ending on the date of the filing of this charge;

b. In an amount not exceeding \$25,000 if the respondent has been adjudged to have committed one other violation within the five-year period ending on the date of the filing of this charge; and

c. In an amount not exceeding \$50,000 if the respondent has been adjudged to have committed two or more violations within the seven-year period ending on the date of the filing of this charge. The penalties shall be determined by the director in such amounts as he deems proper under the circumstances and included in his order following his finding of an unlawful discrimination or an unlawful employment practice pursuant to section 16 of P.L.1945, c.169 (C.10:5-17). Any such amounts collected by the

director shall be paid forthwith into the State Treasury for the general purposes of the State.

L.1983,c.412,s.2; amended 2001, c.254.

### **10:5-14.2. Counties and municipalities over 200,000; office of civil rights; creation and establishment; officers; organization; powers**

Any county, except as hereinafter provided or any municipality with a population of at least 200,000 in a county of the first class, may, upon approval of the Attorney General, create and establish, by ordinance or by resolution in counties not authorized to act by ordinance, an office of civil rights to be administered by a county or municipal director of civil rights who shall be appointed by the appointing authority of the county or municipality. No county in which a municipality has established an office of civil rights prior to the effective date of this amendatory act shall hereafter establish a civil rights office pursuant to this amendatory act. In addition, the governing body may provide for the employment of such other officers including hearing examiners and attorneys, and employees as may be necessary or desirable for the proper conduct of the affairs of the office. The qualifications of the director, hearing examiner and attorneys shall be subject to approval by the Attorney General. A county or municipal office thus established shall have and exercise those powers to enforce the Law Against Discrimination as may be delegated to it as provided in section 2 of this act.

L.1977, c. 121, s. 1, eff. June 6, 1977. Amended by L.1980, c. 87, s. 1, eff. Aug. 21, 1980.

### **10:5-14.3. Delegation of powers by Attorney General; review of findings and conclusions**

Upon a finding that the public interest may be better served thereby, the Attorney General may delegate to such county or municipal office of civil rights the power to investigate complaints and conduct conciliation conferences, in accordance with the provisions of section 13 of P.L.1945, c. 169 (C. 10:5-14), and to proceed in a summary manner in accordance with the provisions of section 6 of P.L.1966, c. 17 (C. 10:5-14.1). In addition, the Attorney General may delegate to such county or municipal office of civil rights the power to conduct hearings and in connection therewith, the power to subpoena witnesses, administer oaths, take testimony and conduct discovery procedures including the taking of interrogatories and oral depositions. The findings and conclusions of a county or municipal office resulting from an exercise of the foregoing powers shall not constitute a final administrative decision, but shall be submitted to the Director of the Division on Civil Rights who may rely and act thereupon in accordance with the provisions of section 16 of P.L.1945, c. 169 (C. 10:5-17). The Attorney General shall establish rules of practice to govern, expedite and effectuate the utilization of the foregoing powers by such county or municipal office.

L.1977, c. 121, s. 2, eff. June 6, 1977. Amended by L.1980, c. 87, s. 2, eff. Aug. 21, 1980.

### **10:5-15. Notice requiring respondent to answer charges; place of hearing**

In case of failure so to eliminate such practice or discrimination, or in advance thereof if in his judgment circumstances so warrant, the Attorney General shall cause to be issued and served in the name of the division, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization, employment agency, owner, lessee, proprietor, manager, superintendent, or agent named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the director at a time and place to

be specified in such notice. The place of any such hearing shall be the office of the Attorney General or such other place as may be designated by him.

L.1945, c. 169, p. 595, s. 14. Amended by L.1949, c. 11, p. 45, s. 10; L.1963, c. 40, s. 9.

### **10:5-16 Practice and procedure.**

15. When the director has issued a finding of probable cause, the case in support of the complaint shall be presented before the director by the attorney for the division and evidence concerning attempted conciliation shall not be received. The respondent shall file a written verified answer to the complaint and appear at such hearing in person or by representative, with or without counsel, and submit testimony. The complainant shall be allowed to intervene and present testimony in person and may be represented by counsel. The director or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The director shall not be bound by the strict rules of evidence prevailing in civil actions in courts of competent jurisdiction of this State. The testimony taken at the hearing shall be under oath and a verbatim record shall be made. When the director has issued a finding of probable cause in a housing discrimination complaint only, any party to that complaint may elect, in lieu of the administrative proceeding set forth in this section, to have the claim asserted in the finding of probable cause adjudicated in a civil action in Superior Court pursuant to section 12 of P.L.1945, c.169 (C.10:5-13). Such an election shall be made not later than 20 days after receipt of the finding of probable cause. Upon such election, the attorney for the division shall promptly file such an action in Superior Court. Upon application to the court wherein the matter is pending, the complainant shall be permitted to intervene and present testimony in person and may be represented by counsel.

L.1945,c.169,s.15; amended 1963, c.40, s.10; 1979, c.404, s.2; 1980, c.71; 2003, c.180, s.15.

### **10:5-17 Findings and conclusions of director; actions; remedies or dismissal.**

16. If, upon all evidence at the hearing, the director shall find that the respondent has engaged in any unlawful employment practice or unlawful discrimination as defined in P.L.1945, c.169 (C.10:5-1 et seq.), the director shall state his findings of fact and conclusions of law and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or unlawful discrimination and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership, in any respondent labor organization, or extending full and equal accommodations, advantages, facilities, and privileges to all persons, as, in the judgment of the director, will effectuate the purpose of P.L.1945, c.169 (C.10:5-1 et seq.), and including a requirement for report of the manner of compliance. If the conduct violative of P.L.1945, c.169 (C.10:5-1 et seq.) constitutes any form of unlawful economic discrimination prohibited in subsection 1., m., or n. of section 11 of P.L.1945, c.169 (C.10:5-12), or any form of unlawful employment practice prohibited by subsection r. or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the affirmative action taken by the director may include the award of three-fold damages to the person or persons aggrieved by the violation. The director shall have the power to use reasonably certain bases, including but not limited to list, catalogue or market prices or values, or contract or advertised terms and conditions, in order to determine particulars or performance in giving appropriate remedy. In addition to any other remedies provided by P.L.1945, c.169 (C.10:5-1 et seq.), a prevailing complainant may recover damages to compensate for emotional distress caused by the activities found to be in violation of P.L.1945, c.169 (C.10:5-1 et seq.) to the same extent as is available

in common law tort actions. In any case in which the director, Attorney General, or appropriate organization is a complainant, on behalf of named or unnamed individuals or a class of individuals, any of the remedies or relief allowed by P.L.1945, c.169 (C.10:5-1 et seq.) may be awarded or applied to the named or unnamed individual victims of discrimination. If, upon all evidence, the director shall find that the respondent has not engaged in any such unlawful practice or unlawful discrimination, the director shall state his findings of fact and conclusions of law and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

This section shall not apply to a violation regarding an inquiry as to an applicant's salary history pursuant to section 2 of P.L.2019, c.199 (C.10:4-12.12).

L.1945, c.169, s.16; amended 1949, c.11, s.11; 1963, c.40, s.11; 1966, c.17, s.7; 1977, c.96, s.3; 1979, c.404, s.3; 2003, c.180, s.16; 2018, c.9, s.4; 2019, c.199, s.4.

### **10:5-18. Rules of practice; limitations**

The Attorney General shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and his own actions thereunder. Any complaint filed in the division or in any municipal office pursuant to this act must be so filed within 180 days after the alleged act of discrimination.

L.1945, c. 169, p. 596, s. 17. Amended by L.1963, c. 40, s. 12; L.1979, c. 404, s. 4, eff. Feb. 8, 1980.

### **10:5-19. Enforcement of orders**

Observance of an order of the director issued pursuant to the provisions of this act including collection or enforcement of damages or penalties may be enforced by a summary civil action brought by the director in the Superior Court to obtain such relief as may be necessary to effectuate the terms of said order.

L.1945, c. 169, p. 597, s. 18. Amended by L.1949, c. 11, p. 46, s. 12; L.1953, c. 18, p. 322, s. 41; L.1963, c. 40, s. 13; L.1983, c. 412, s. 1, eff. Jan. 4, 1984.

### **10:5-21. Appeals**

Any person aggrieved by a final order of the director may take an appeal therefrom to the Superior Court, Appellate Division as an appeal from a State administrative agency.

L.1945, c. 169, p. 597, s. 20. Amended by L.1949, c. 11, p. 46, s. 14; L.1953, c. 18, p. 322, s. 43; L.1963, c. 40, s. 14, eff. May 21, 1963.

### **10:5-24. Transcript of hearing**

Any party may require that a transcript of a hearing be prepared at his cost.

L.1945, c. 169, p. 598, s. 23. Amended by L.1949, c. 11, p. 48, s. 17; L.1963, c. 40, s. 15, eff. May 21, 1963; L.1979, c. 404, s. 5, eff. Feb. 8, 1980.

**10:5-25. Attorney for division; compensation**

The Attorney General shall appoint or assign the attorney for the division who may be a deputy attorney general. If said attorney is not a deputy attorney general he shall receive such compensation as may be determined by the Attorney General subject to available appropriations.

L.1945, c. 169, p. 598, s. 24. Amended by L.1963, c. 40, s. 16.

**10:5-26. Resisting or impeding performance of duties; violation of orders; punishment**

Any person who shall willfully resist, prevent, impede or interfere with the Attorney General or any representative of the division in the performance of duty under this act, or shall willfully violate an order of the Attorney General, or the director, shall be guilty of a misdemeanor and shall be punishable by imprisonment for not more than one year, or by a fine of not more than \$500.00, or by both; but procedure for the review of the order shall not be deemed to be such willful conduct.

L.1945, c. 169, p. 598, s. 25. Amended by L.1949, c. 11, p. 48, s. 18; L.1963, c. 40, s. 17.

**10:5-27 Construction of act; other laws not affected; exception; other remedies.**

26. The provisions of this act shall be construed fairly and justly with due regard to the interests of all parties. Nothing contained in this act shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this State relating to discrimination because of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, disability, gender identity or expression, nationality or sex or liability for service in the Armed Forces of the United States; except that, as to practices and acts declared unlawful by section 11 of this act, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. Nothing herein contained shall bar, exclude or otherwise affect any right or action, civil or criminal, which may exist independently of any right to redress against or specific relief from any unlawful employment practice or unlawful discrimination. With respect only to affectional or sexual orientation and gender identity or expression, nothing contained herein shall be construed to require the imposition of affirmative action, plans or quotas as specific relief from an unlawful employment practice or unlawful discrimination.

L.1945,c.169,s.26; amended 1949, c.11, s.19; 1951, c.64, s.7; 1970, c.80, s.15; 1991, c.519, s.9; 2003, c.180, s.17; 2006, c.100, s.11.

**10:5-27.1 Attorney fees.**

6. In any action or proceeding brought under P.L.1945, c.169 (C.10:5-1 et seq.), the prevailing party may be awarded a reasonable attorney's fee as part of the cost, provided however, that no attorney's fee shall be awarded to the respondent unless there is a determination that the complainant brought the charge in bad faith. If the complainant's case was initiated by a housing authority on behalf of a tenant for a violation of paragraph (4) of subsection g. or paragraph (4) of subsection h. of section 11 of P.L.1945, c.169 (C.10:5-12) and the complainant prevailed, reasonable costs, including attorney fees, of the housing authority may be assessed against a nonprevailing respondent. If the complainant's case was presented by

the attorney for the division and the complainant prevailed, the reasonable costs, including attorney fees, of such representation may be assessed against a nonprevailing respondent.

Notwithstanding any other provision of law to the contrary, an award of an attorney's fee in accordance with this section shall not be available as a remedy to violations of section 2 of P.L.2019, c.199 (C.10:4-12.12).

L.1979, c.404, s.6; amended 2002, c.82, s.4; 2019, c.199, s.5.

### **10:5-28. Partial invalidity**

If any clause, sentence, paragraph, or part of this act or any amendment or supplement thereto or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act.

L.1945, c. 169, p. 598, s. 27. Amended by L.1977, c. 96, s. 4, eff. May 19, 1977.

### **10:5-29 Person with a disability; accompaniment by service or guide dog; use of public facilities; liabilities.**

1. Any person with a disability accompanied by a service or guide dog trained by a recognized training agency or school is entitled, with his dog, to the full and equal enjoyment, advantages, facilities and privileges of all public facilities, subject only to the following conditions:

a. A person with a disability, if accompanied by a service or guide dog, shall keep such dog in his immediate custody at all times;

b. A person with a disability accompanied by a service or guide dog shall not be charged any extra fee or payment for admission to or use of any public facility;

c. A person with a disability who has a service or guide dog in his possession shall be liable for any damages done to the premises of a public facility by such dog.

d. (Deleted by amendment; P.L.1981, c. 391.)

L.1971,c.130,s.1; amended 1977, c.456, s.2; 1980, c.46, s.5; 1981, c.391, s.1; 1983, c.485, s.4; 2003, c.180, s.18.

#### **10:5-29.1 Person with a disability; unlawful employment practice.**

3. Unless it can be clearly shown that a person's disability would prevent such person from performing a particular job, it is an unlawful employment practice to deny to an otherwise qualified person with a disability the opportunity to obtain or maintain employment, or to advance in position in his job, solely because such person is a person with a disability or because such person is accompanied by a service or guide dog.

L.1977,c.456,s.3; amended 1980, c.46, s.6; 1983, c.485, s.5; 2003,c.180,s.19.

### **10:5-29.2 Housing accommodations.**

4. A person with a disability is entitled to rent, lease or purchase, as other members of the general public, all housing accommodations offered for rent, lease, or compensation in this State, subject to the rights, conditions and limitations established by law. Nothing in this section shall require any person renting, leasing or providing for compensation real property, to modify such property in any way to provide a higher degree of care for a person with a disability than for any other person. A person with a disability who has a service or guide dog, or who obtains a service or guide dog, or who retains their former service or guide dog as a pet after its retirement from service, shall be entitled to full and equal access to all housing accommodations and shall not be required to pay extra compensation for such service or guide dog or retired pet, but shall be liable for any damages done to the premises by such dog. Any provision in any lease or rental agreement prohibiting maintenance of a pet or pets on or in the premises shall not be applicable to a working service or guide dog, or a retired service or guide dog, owned by a tenant who is a person with a disability.

L.1977, c.456, s.4; amended 1980, c.46, s.7; 1983, c.485, s.6; 2003, c.180, s.20; 2017, c.187.

### **10:5-29.3 Service, guide dog trainer; access to public facilities; responsibilities.**

5. A service or guide dog trainer, while engaged in the actual training process and activities of service dogs or guide dogs, shall have the same rights and privileges with respect to access to public facilities, and the same responsibilities as are applicable to a person with a disability.

L.1977,c.456,s.5; amended 1980, c.46, s.8; 1983, c.485, s.7; 2003, c.180, s.21.

### **10:5-29.4 Right-of-way for person accompanied by or instructing a guide dog.**

6. A person with a disability accompanied by a guide dog, or a guide dog instructor engaged in instructing a guide dog, shall have the right-of-way over vehicles while crossing a highway or any intersection thereof, as provided in section 1 of P.L.1939, c.274 (C.39:4-37.1).

L.1977,c.456,s.6; amended 1999, c.264, s.1; 2003, c.180, s.22.

### **10:5-29.5 Violations, misrepresentation, interference with disabled persons, guide or service dogs; fine.**

7. Any person who violates the provisions of P.L.1977, c.456 in a manner not otherwise prohibited by P.L.1945, c.169 (C.10:5-1 et seq.), or who fits a dog with a harness of the type commonly used by blind persons in order to represent that such dog is a guide dog when training of the type that guide dogs normally receive has not in fact, been provided, or who otherwise intentionally interferes with the rights of a person with a disability, who is accompanied by a guide or service dog, or the function or the ability to function of a guide or service dog, shall be fined not less than \$100 and not more than \$500.

L.1977,c.456,s.7; amended 2005, c.258.

### **10:5-29.6 Rights and privileges relative to service dogs.**

9. Whenever the law accords rights and privileges to or imposes conditions and restrictions upon blind persons with respect to their use of dogs to countervail their disability, and known and described as "seeing eye" dogs, those rights, privileges, conditions and restrictions shall also apply to persons with disabilities with respect to their use of dogs to countervail their disability, and known and described as either "service dogs" or "hearing ear" dogs.

L.1980,c.46,s.9; amended 1983, c.485, s.8; 2003, c.180, s.23.

### **10:5-29.7 Definitions relative to access for certain working dogs.**

1. As used in this act:

"Housing accommodation" means the same as the term is defined in subsection u. of section 5 of P.L.1945, c.169 (C.10:5-5);

"Public facility" means the same as the term is defined in subsection v. of section 5 of P.L.1945, c.169 (C.10:5-5); and

"Working dog" means any dog trained for the purpose of human search and rescue, body recovery, arson detection, bomb detection, narcotics detection, criminal apprehension, police assistance or other related purposes, whether in the performance of such tasks or while traveling to or from such tasks.

L.2006, c.88, s.1.

### **10:5-29.8 Law enforcement, emergency service workers with working dog entitled to full access.**

2. Any member of a police, fire, law enforcement or other related emergency service agency, accompanied by a working dog, trained by a recognized training agency or school, is entitled, with the dog, to full and equal access to all public facilities and modes of public transportation, subject only to the following conditions:

a. A member of a police, fire, law enforcement or other related emergency service agency, if accompanied by a working dog, shall keep the dog in immediate custody at all times;

b. A member of a police, fire, law enforcement or other related emergency service agency, accompanied by a working dog, shall not be charged an extra fee or payment for the dog for admission to, or use of, any public facility; and

c. A member of a police, fire, law enforcement or other related emergency service agency, who has possession of a working dog, shall be liable for any damages done to the premises of a public facility by

the dog.

L.2006, c.88, s.2.

### **10:5-29.9 Possessors of working dog, certain, entitlement to housing, business accommodations.**

3. A member of a police, fire, law enforcement or other related emergency service agency who possesses a working dog, is entitled to rent, lease or purchase, as other members of the general public, all housing accommodations and business accommodations offered for rent, lease, or compensation in this State, subject to the rights, conditions and limitations established by law. A member of a police, fire, law enforcement or other related emergency service agency who possesses a working dog, or who obtains a working dog, shall be entitled to full and equal access to all housing accommodations and business accommodations and shall not be required to pay extra compensation for the dog, but shall be liable for any damages done to the premises by the dog. Any provision in any lease or rental agreement prohibiting maintenance of a pet or pets on or in the premises shall not be applicable to a working dog owned by a tenant who is a member of a police, fire, law enforcement or other related emergency service agency.

L.2006, c.88, s.3.

### **10:5-29.10 Violations; fine.**

4. Any person who violates a provision of this act shall be subject to a fine of between \$100 and \$500.

L.2006, c.88, s.4.

### **10:5-29.11 Civil penalty concerning person with a disability accompanied by guide or service dogs; complaint, action with Division on Civil Rights.**

1. a. Any person who interferes with or denies the access of a person with a disability accompanied by a service or guide dog to any public facility in violation of section 1 of P.L.1971, c.130 (C.10:5-29) shall, in addition to any other relief or affirmative action provided by law, be liable to a civil penalty of not less than:

- (1) \$250 for the first violation;
- (2) \$500 for the second violation; and
- (3) \$1,000 for the third and each subsequent violation.

b. The penalty shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. A law enforcement officer having enforcement authority in that municipality shall issue a summons for a violation of the provisions of subsection a. of this section, and shall serve and execute all process with respect to the enforcement of this section consistent with the Rules of Court.

The issuance of a summons pursuant to this subsection shall not prohibit an aggrieved party from filing a complaint or action with the Division on Civil Rights or in the Superior Court of New Jersey alleging a

violation of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), based on the same incident or conduct. In any instance where an aggrieved party files a complaint or action with the Division on Civil Rights or in the Superior Court of New Jersey alleging a violation of the "Law Against Discrimination" based on the same incident or conduct for which a civil penalty has been imposed pursuant to subsection a. of this section, the Division on Civil Rights or Superior Court of New Jersey, as the case may be, shall make a de novo ruling and any adjudication by the municipal court shall not constitute res judicata for the complaint or action filed with the Division on Civil Rights or in the Superior Court of New Jersey.

c. The penalties assessed under this section shall be payable to the State Treasurer and shall be appropriated to the Department of Law and Public Safety to fund educational programs for law enforcement officers on the right of a person with a disability to have a service or guide dog in a place of public accommodation.

d. The Attorney General shall establish a public awareness campaign to inform the public about the provisions of this act.

L.2017, c.169, s.1.

### **10:5-30. Administration and enforcement**

The provisions of this act shall be administered and enforced by the Division of Civil Rights in the Department of Law and Public Safety pursuant to the authority vested in it by the Law Against Discrimination (C. 10:5-1 et seq.).

L.1971, c. 130, s. 2, eff. May 6, 1971.

### **10:5-31 Definitions.**

1. As used in this act:

a. "Public works contract" means any contract to be performed for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency or authority created by any of the foregoing, for the construction, alteration or repair of any building or public work or for the acquisition of materials, equipment, supplies or services with respect to which discrimination in the hiring of persons for the performance of work thereunder or under any subcontract thereunder by reason of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, nationality, gender identity or expression, disability or sex is prohibited under R.S.10:2-1.

b. "Equal employment opportunity" means equality in opportunity for employment by any contractor, subcontractor or business firm engaged in the carrying out of a public works project including its development, design, acquisition, construction, management and operation.

L.1975,c.127,s.1; amended 1991, c.519, s.11; 2003, c.180, s.24; 2006, c.100, s.12.

**10:5-32 Public works contract not awarded without agreement and guarantee of equal opportunity.**

2. No public works contract shall be awarded by the State, a county, municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, nor shall any moneys be paid thereunder to any contractor, subcontractor or business firm which has not agreed and guaranteed to afford equal opportunity in performance of the contract and, except with respect to affectional or sexual orientation, and gender identity or expression, in accordance with an affirmative action program approved by the State Treasurer.

L.1975,c.127,s.2; amended 1991, c.519, s.12; 2006, c.100, s.13.

**10:5-33 Contents of bid specs, contract provisions.**

3. The State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, shall include in the bid specifications and the contract provisions of any public works contract the following language:

"During the performance of this contract, the contractor agrees as follows:

a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;

b. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

c. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment."

In soliciting bids for any public works contract the State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, shall include in the advertisement and solicitation of bids the following language: "Bidders are required to comply with the requirements of P.L.1975, c.127."

L.1975,c.127,s.3; amended 1976, c.60; 1991, c.519, s.13; 2003, c.180, s.25; 2006, c.100, s.14.

### **10:5-34 Affirmative action program, submission to State Treasurer; fee; approval.**

4. Each prospective bidder on a public works contract or contracts and each subcontract bidder to a prime contract bidder shall formulate and submit to the State Treasurer his or its affirmative action program of equal opportunity whereby he or it guarantees minorities employment in all employment categories; the submission shall be accompanied by a fee in an amount to be fixed by the State Treasurer. For the purposes of this section, equal employment opportunity but not affirmative action is required with respect to persons identified solely by their affectional or sexual orientation and gender identity or expression. The State Treasurer shall notify the bidder of approval or disapproval of his or its program within 60 days of its submission; failure of the State Treasurer to so act within 60 days shall constitute approval of the program. Any existing federally approved or sanctioned affirmative action program shall be approved by the State Treasurer.

No subcontract bidder who has less than five employees need comply with the provisions of this section.

L.1975,c.127,s.4; amended 1991, c.519, s.14; 2006, c.100, s.15.

### **10:5-35. Failure to include affirmative action program; nullity of contract; violations; fine**

a. Any public works contract including any subcontract awarded thereunder to any contractor which fails to contain the provisions set forth in sections 2 and 3 of this act shall be null and void; provided that if the award and execution of a contract is subject to Federal regulation requiring inclusion of similar contract provisions the same may be inserted in lieu of those required by sections 2 and 3 of this act, and further provided that nothing contained in this act shall operate to affect in any manner whatsoever any existing federally approved or sanctioned affirmative action program.

b. For any violation of this law in addition to all other penalties allowable by law, the violator shall be subject to a fine of up to \$1,000.00 for each violation for each day during which the violation continues, said fine to be collected in a summary manner pursuant to the "Penalty Enforcement Law" (N.J.S. 2A:58-1 et seq.).

L.1975, c. 127, s. 5.

### **10:5-36. State treasurer; enforcement; powers**

In carrying out his responsibilities under this act, the State Treasurer, in addition to and without limitation of other powers which he may have by law, shall have the following powers:

a. To investigate and determine the percentage of population of minority groups in the State or areas thereof from which the work force for public works contracts is or may be drawn;

b. To establish and promulgate such percentages as guidelines in determining the adequacy of

affirmative action programs submitted for approval pursuant to section 2 of this act;

c. To require all State and local agencies awarding public works contracts to submit for approval their affirmative action programs;

d. To prescribe those affirmative action program provisions to be included in all public works contracts;

e. To provide guidelines to assist governmental agencies in the formulation of and the administration and enforcement of affirmative action programs;

f. To require State and local agencies awarding public works contracts to designate appropriate officers or employees to maintain liaison with and assist the State Treasurer in the implementation of this act and affirmative action programs adopted pursuant thereto;

g. To prescribe appropriate administrative procedures relating to prequalification of bidders, bidding practices and contract awards to assure equal employment opportunities;

h. To provide staff and technical assistance to public bodies, contractors and subcontractors in furtherance of the objectives of this act;

i. To levy on contractors and subcontractors fees and charges found by him to be reasonable and necessary to accomplish the objectives of this act;

j. To refer to the Attorney General or his designee circumstances which may constitute violations of the "Law Against Discrimination" ;

k. To issue, amend and rescind rules and regulations in accordance with the "Administrative Procedure Act" (C. 52:14B-1 et seq.);

l. To enforce in a court of law the provisions of this act or to join in or assist any enforcement proceeding initiated by any aggrieved person;

m. To make and execute contracts and all other instruments with other public agencies and private firms or individuals necessary or convenient for the exercise of their powers and functions hereunder, including contracts with consultants for rendering professional or technical assistance and advice;

n. To contract for or accept any gifts or grants or loans of funds or property or financial or other aid in any form from the Federal government or any agency or instrumentality thereof, or from the State or any agency or instrumentality thereof, or from any other source and to comply, subject to the provisions of this act, with the terms and conditions thereof.

o. To issue rules and regulations that will expand business opportunities for socially and economically disadvantaged contractors and vendors seeking to provide materials and services for State contracts.

L.1975, c. 127, s. 6. Amended by L.1979, c. 266, s. 1, eff. Jan. 3, 1980.

**10:5-37. Costs of project; inclusion of expenses furthering equal employment opportunities**

Notwithstanding any provision of any State law, ordinance or regulation to the contrary, there may be included in the costs of a project or facility to which a public works contract relates any expenses incurred by a public body or private firm or individual for the purpose of furthering equal employment opportunities with respect to such project or facility or for the purpose of complying with the provisions of this act, and such expenses may be paid for or financed by any method which may be used to pay or finance other costs of development, acquisition or construction of such project or facility.

L.1975, c. 127, s. 7.

**10:5-38. Persons entitled to bring enforcement actions**

Any individual who has been discriminated against in violation of the provisions of this act and any organization which represents or acts to further the interests of individuals who have been discriminated against by reason of any violation of the provisions of this act shall have standing in courts of law to institute actions to enforce the provisions of this act.

L.1975, c. 127, s. 8.

**10:5-39 Definitions.**

1. As used in this act:

a. "Affirmative action program for veterans" means a plan guaranteeing to veterans an equal employment opportunity, which includes but is not limited to the following areas: recruitment, selection, hiring, training, promotion, transfer, layoff, return from layoff, compensation, and fringe benefits.

b. "Public works contract" means any contract exceeding \$250,000.00 in price to be performed for or on behalf of the State for the construction, alteration, or repair of any building or public work.

c. "Veteran" means any soldier, sailor, marine, airman, nurse or army field clerk, who has served at least 90 days in the active military, naval or air service of the United States and has been discharged or released therefrom under conditions other than dishonorable, and who has presented to the Civil Service Commission of New Jersey full and convincing evidence of such record of service on or before the date of making application for a position governed by this act. The 90-day requirement for active service is exclusive of any time such veteran was assigned: (1) for a course of education or training under the Army Specialized Training Program or the Navy College Training Program, which course was a continuation of his civilian course and was pursued to completion; or (2) as a cadet or midshipman at one of the service academies; and exclusive of any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code, pursuant to an enlistment in the Army or Air Force National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; provided, that any person receiving an actual, service-incurred injury or disability shall be classed as a veteran, whether or not he has completed the 90 days' service as herein provided.

L.1983, c.197, s.1; amended 2017, c.184, s.5.

**10:5-40 Equal employment opportunities for veterans.**

2. Each public works contract shall contain appropriate provisions in which contractors, subcontractors, or their assignees shall guarantee an equal employment opportunity to veterans. If any veteran believes any contractor of the State has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, such veteran may file a complaint with the State Treasurer, who shall promptly investigate such complaint and take appropriate action.

L.1983, c.197, s.2; amended 2017, c.184, s.6.

**10:5-41 Affirmative action program for veterans; investigations.**

3. The State Treasurer shall prescribe an affirmative action program for veterans. The Treasurer shall designate an appropriate official in the Department of the Treasury to receive and investigate any complaints charging discriminatory employment practices toward such veterans.

L.1983, c.197, s.3; amended 2017, c.184, s.7.

**10:5-42. Penalties**

Any person who violates this law or the provisions of a public works contract guaranteeing an equal employment opportunity to veterans shall be subject to any penalties allowable under law.

L.1983, c. 197, s. 4, eff. May 27, 1983.

**10:5-43. Short title**

1. Sections 1 through 10 of this act shall be known and may be cited as the "Genetic Privacy Act."

L.1996,c.126, s.1.

**10:5-44. Findings, declarations relative to genetic information**

2. The Legislature finds and declares:

a. The DNA molecule contains information about an individual's probable medical future. This information is written in a code that is rapidly being broken.

b. Genetic information is personal information that should not be collected, retained or disclosed without the individual's authorization.

c. The improper collection, retention or disclosure of genetic information can lead to significant harm to the individual, including stigmatization and discrimination in areas such as employment, education, health care and insurance.

d. An analysis of an individual's DNA provides information not only about an individual, but also about the individual's parents, siblings and children, thereby impacting family privacy, including reproductive decisions.

- e. Current legal protections for medical information, tissue samples and DNA samples are inadequate to protect genetic privacy.
- f. Laws for the collection, storage and use of identifiable DNA samples and private genetic information obtained from those samples are needed both to protect individual privacy and to permit legitimate genetic research.
- g. Progress in mapping the genes that cause breast cancer and other diseases has far outpaced the development of a legal and ethical context in which genetic information can be properly evaluated.
- h. Effective tests to determine the presence of genes that cause breast cancer and other diseases carry with them the devastating potential for discrimination against carriers of these genes.

L.1996,c.126, s.2.

### **10:5-45. Informed consent required to obtain genetic information**

6. No person shall obtain genetic information from an individual, or from an individual's DNA sample, without first obtaining informed consent from the individual or the individual's representative according to regulations promulgated by the Commissioner of Health and Senior Services, in consultation with the Commissioner of Banking and Insurance, pursuant to subsection b. of section 9 of P.L.1996, c.126 (C.10:5-48).

a. The requirements of this section shall not apply to genetic information obtained:

(1) By a State, county, municipal or federal law enforcement agency for the purposes of establishing the identity of a person in the course of a criminal investigation or prosecution;

(2) To determine paternity in accordance with the provisions of section 11 of P.L.1983, c.17 (C.9:17-48);

(3) Pursuant to the provisions of the "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.);

(4) To determine the identity of deceased individuals;

(5) For anonymous research where the identity of the subject will not be released;

(6) Pursuant to newborn screening requirements established by State or federal law; or

(7) As authorized by federal law for the identification of persons.

b. In the case of a policy of life insurance or a disability income insurance contract, informed consent shall be obtained pursuant to the provisions of P.L.1985, c.179 (C.17:23A-1 et seq.).

L.1996,c.126,s.6.

**10:5-46. Authorization to retain genetic information**

7. a. No person shall retain an individual's genetic information without first obtaining authorization under the informed consent requirement of section 6 of P.L.1996, c.126 (C.10:5-45) from the individual or the individual's representative, unless:

(1) Retention is necessary for the purposes of a criminal or death investigation or a criminal or juvenile proceeding;

(2) Retention is necessary to determine paternity in accordance with the provisions of section 11 of P.L.1983, c.17 (C.9:17-48);

(3) Retention is authorized by order of a court of competent jurisdiction;

(4) Retention is made pursuant to the provisions of the "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.); or

(5) Retention of information is for anonymous research where the identity of the subject will not be released.

b. The DNA sample of an individual from which genetic information has been obtained shall be destroyed promptly upon the specific request of that individual or the individual's representative, unless:

(1) Retention is necessary for the purposes of a criminal or death investigation or a criminal or juvenile proceeding; or

(2) Retention is authorized by order of a court of competent jurisdiction.

c. A DNA sample from an individual who is the subject of a research project shall be destroyed promptly upon completion of the project or withdrawal of the individual from the project, whichever occurs first, unless the individual or the individual's representative directs otherwise by informed consent.

d. A DNA sample from an individual for insurance or employment purposes shall be destroyed promptly after the purpose for which the sample was obtained has been accomplished unless retention is authorized by order of a court of competent jurisdiction.

e. An individual or an individual's representative, promptly upon request, may inspect, request correction of and obtain genetic information from the records of the individual unless the individual directs otherwise by informed consent pursuant to section 6 of P.L.1996, c.126 (C.10:5-45); except that, in the case of a policy of life insurance or a disability income insurance contract, the provisions of P.L.1985, c.179 (C.17:23A-1 et seq.) shall apply.

f. This section applies only to genetic information that can be identified as belonging to an individual or family. This section does not apply to any law, contract or other arrangement that determines a person's rights to compensation relating to substances or information derived from an individual's DNA sample.

L.1996,c.126,s.7.

**10:5-47. Conditions for disclosure of genetic information**

8. a. Regardless of the manner of receipt or the source of genetic information, including information received from an individual, a person may not disclose or be compelled, by subpoena or any other means, to disclose the identity of an individual upon whom a genetic test has been performed or to disclose genetic information about the individual in a manner that permits identification of the individual, unless:

- (1) Disclosure is necessary for the purposes of a criminal or death investigation or a criminal or juvenile proceeding;
- (2) Disclosure is necessary to determine paternity in accordance with the provisions of section 11 of P.L.1983, c.17 (C.9:17-48);
- (3) Disclosure is authorized by order of a court of competent jurisdiction;
- (4) Disclosure is made pursuant to the provisions of the "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.);
- (5) Disclosure is authorized by the tested individual or the tested individual's representative by signing a consent which complies with the requirements of the Department of Health and Senior Services;
- (6) Disclosure is for the purpose of furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent;
- (7) Disclosure is for the purpose of identifying bodies;
- (8) Disclosure is pursuant to newborn screening requirements established by State or federal law;
- (9) Disclosure is authorized by federal law for the identification of persons; or
- (10) Disclosure is by an insurer pursuant to the requirements of P.L.1985, c.179 (C.17:23A-1 et seq.).

b. The provisions of this section apply to any subsequent disclosure by any person after another person has disclosed genetic information or the identity of an individual upon whom a genetic test has been performed.

L.1996,c.126,s.8.

**10:5-48. Notice to persons receiving genetic testing**

9. a. A person who requires or requests that genetic testing be done or receives records, results or findings of genetic testing shall provide the person tested with notice that the test was performed and that the records, results or findings were received unless otherwise directed by informed consent pursuant to section 6 of P.L.1996, c.126 (C.10:5-45). The notice shall state that the information may not be disclosed to any person without the written consent of the person tested, unless disclosure is made pursuant to one of the exceptions provided for in section 8 of P.L.1996, c.126 (C. 10:5-47).

b. The Commissioner of Health and Senior Services, in consultation with the Commissioner of Banking and Insurance, shall promulgate regulations pursuant to the provisions of the "Administrative

Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) governing procedures for obtaining informed written consent pursuant to P.L.1996, c.126, except where the procedures for obtaining informed written consent already are governed by national standards for informed consent as designated by the Commissioner of Health and Senior Services by regulation, which may include, but need not be limited to, guidelines from the Office of Protection for Research Risk, the Food and Drug Administration or other appropriate federal agencies.

c. The provisions of this section shall not apply to newborn screening requirements established by State or federal law.

L.1996,c.126,s.9.

### **10:5-49. Violations, penalties for unlawful disclosure of genetic information**

10. a. Any person violating the provisions of sections 6 through 9, inclusive, of P.L.1996, c.126 (C.10:5-45 through C.10:5-48) shall be a disorderly person and shall be punished by a fine of \$1,000, a prison term of six months, or both.

b. Any person who willfully discloses an individual's genetic information to any third party in violation of P.L.1996, c.126 shall be punished by a fine of \$5,000, a prison term of one year, or both.

c. Any person who discloses an individual's genetic information in violation of P.L.1996, c.126, shall be liable to the individual for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the disclosure.

L.1996,c.126,s.10.