

STATE OF NEW YORK

61

2015-2016 Regular Sessions

IN SENATE

(Prefiled)

January 7, 2015

Introduced by Sen. SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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

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

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

11 The legislature further finds that many residents of this state have
12 encountered prejudice on account of their gender identity or expression,
13 and that this prejudice has severely limited or actually prevented
14 access to employment, housing and other basic necessities of life, lead-
15 ing to deprivation and suffering. The legislature further recognizes
16 that this prejudice has fostered a general climate of hostility and
17 distrust, leading in some instances to physical violence against those
18 perceived to live in a gender identity or expression which is different

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

LBD00167-01-5

1 from that traditionally associated with the sex assigned to that person
2 at birth.

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

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

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

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

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

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

32 35. The term "gender identity or expression" means having or being
33 perceived as having a gender identity, self-image, appearance, behavior
34 or expression whether or not that gender identity, self-image, appear-
35 ance, behavior or expression is different from that traditionally asso-
36 ciated with the sex assigned to that person at birth.

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

40 8. To create such advisory councils, local, regional or state-wide, as
41 in its judgment will aid in effectuating the purposes of this article
42 and of section eleven of article one of the constitution of this state,
43 and the division may empower them to study the problems of discrimi-
44 nation in all or specific fields of human relationships or in specific
45 instances of discrimination because of age, race, creed, color, national
46 origin, sexual orientation, gender identity or expression, military
47 status, sex, disability or marital status and make recommendations to
48 the division for the development of policies and procedures in general
49 and in specific instances. The advisory councils also shall disseminate
50 information about the division's activities to organizations and indi-
51 viduals in their localities. Such advisory councils shall be composed of
52 representative citizens, serving without pay, but with reimbursement for
53 actual and necessary traveling expenses; and the division may make
54 provision for technical and clerical assistance to such councils and for
55 the expenses of such assistance.

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

10 § 5. Paragraphs (a), (b), (c) and (d) of subdivision 1 of section 296
11 of the executive law, paragraph (a) as amended by chapter 80 of the laws
12 of 2009 and paragraphs (b), (c), and (d) as amended by chapter 75 of the
13 laws of 2005, are amended to read as follows:

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

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

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

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

1 § 6. Paragraphs (b), (c) and (d) of subdivision 1-a of section 296 of
2 the executive law, as amended by chapter 106 of the laws of 2003, are
3 amended to read as follows:

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

10 (c) To discriminate against any person in his or her pursuit of such
11 programs or to discriminate against such a person in the terms, condi-
12 tions or privileges of such programs because of race, creed, color,
13 national origin, sexual orientation, gender identity or expression,
14 military status, sex, age, disability or marital status;

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

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

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

46 § 8. Paragraphs (a), (b), (c) and (c-1) of subdivision 2-a of section
47 296 of the executive law, paragraphs (a), (b) and (c) as amended and
48 paragraph (c-1) as added by chapter 106 of the laws of 2003, are amended
49 to read as follows:

50 (a) To refuse to sell, rent or lease or otherwise to deny to or with-
51 hold from any person or group of persons such housing accommodations
52 because of the race, creed, color, disability, national origin, sexual
53 orientation, gender identity or expression, military status, age, sex,
54 marital status, or familial status of such person or persons, or to
55 represent that any housing accommodation or land is not available for
56 inspection, sale, rental or lease when in fact it is so available.

1 (b) To discriminate against any person because of his or her race,
2 creed, color, disability, national origin, sexual orientation, gender
3 identity or expression, military status, age, sex, marital status, or
4 familial status in the terms, conditions or privileges of any publicly-
5 assisted housing accommodations or in the furnishing of facilities or
6 services in connection therewith.

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

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

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

28 3-b. It shall be an unlawful discriminatory practice for any real
29 estate broker, real estate salesperson or employee or agent thereof or
30 any other individual, corporation, partnership or organization for the
31 purpose of inducing a real estate transaction from which any such person
32 or any of its stockholders or members may benefit financially, to repre-
33 sent that a change has occurred or will or may occur in the composition
34 with respect to race, creed, color, national origin, sexual orientation,
35 gender identity or expression, military status, sex, disability, marital
36 status, or familial status of the owners or occupants in the block,
37 neighborhood or area in which the real property is located, and to
38 represent, directly or indirectly, that this change will or may result
39 in undesirable consequences in the block, neighborhood or area in which
40 the real property is located, including but not limited to the lowering
41 of property values, an increase in criminal or anti-social behavior, or
42 a decline in the quality of schools or other facilities.

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

45 4. It shall be an unlawful discriminatory practice for an education
46 corporation or association which holds itself out to the public to be
47 non-sectarian and exempt from taxation pursuant to the provisions of
48 article four of the real property tax law to deny the use of its facili-
49 ties to any person otherwise qualified, or to permit the harassment of
50 any student or applicant, by reason of his race, color, religion, disa-
51 bility, national origin, sexual orientation, gender identity or
52 expression, military status, sex, age or marital status, except that any
53 such institution which establishes or maintains a policy of educating
54 persons of one sex exclusively may admit students of only one sex.

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

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

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

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

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

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

45 (b) It shall be an unlawful discriminatory practice for the owner,
46 lessee, sub-lessee, or managing agent of, or other person having the
47 right of ownership or possession of or the right to sell, rent or lease,
48 land or commercial space:

49 (1) To refuse to sell, rent, lease or otherwise deny to or withhold
50 from any person or group of persons land or commercial space because of
51 the race, creed, color, national origin, sexual orientation, gender
52 identity or expression, military status, sex, age, disability, marital
53 status, or familial status of such person or persons, or to represent
54 that any housing accommodation or land is not available for inspection,
55 sale, rental or lease when in fact it is so available;

1 (2) To discriminate against any person because of race, creed, color,
2 national origin, sexual orientation, gender identity or expression,
3 military status, sex, age, disability, marital status, or familial
4 status in the terms, conditions or privileges of the sale, rental or
5 lease of any such land or commercial space; or in the furnishing of
6 facilities or services in connection therewith;

7 (3) To print or circulate or cause to be printed or circulated any
8 statement, advertisement or publication, or to use any form of applica-
9 tion for the purchase, rental or lease of such land or commercial space
10 or to make any record or inquiry in connection with the prospective
11 purchase, rental or lease of such land or commercial space which
12 expresses, directly or indirectly, any limitation, specification or
13 discrimination as to race, creed, color, national origin, sexual orien-
14 tation, gender identity or expression, military status, sex, age, disa-
15 bility, marital status, or familial status; or any intent to make any
16 such limitation, specification or discrimination.

17 (4) With respect to age and familial status, the provisions of this
18 paragraph shall not apply to the restriction of the sale, rental or
19 lease of land or commercial space exclusively to persons fifty-five
20 years of age or older and the spouse of any such person, or to the
21 restriction of the sale, rental or lease of land to be used for the
22 construction, or location of housing accommodations exclusively for
23 persons sixty-two years of age or older, or intended and operated for
24 occupancy by at least one person fifty-five years of age or older per
25 unit. In determining whether housing is intended and operated for occu-
26 pancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c)
27 (42 U.S.C. 3607(b) (2) (c)) of the federal Fair Housing Act of 1988, as
28 amended, shall apply.

29 (c) It shall be an unlawful discriminatory practice for any real
30 estate broker, real estate salesperson or employee or agent thereof:

31 (1) To refuse to sell, rent or lease any housing accommodation, land
32 or commercial space to any person or group of persons or to refuse to
33 negotiate for the sale, rental or lease, of any housing accommodation,
34 land or commercial space to any person or group of persons because of
35 the race, creed, color, national origin, sexual orientation, gender
36 identity or expression, military status, sex, age, disability, marital
37 status, or familial status of such person or persons, or to represent
38 that any housing accommodation, land or commercial space is not avail-
39 able for inspection, sale, rental or lease when in fact it is so avail-
40 able, or otherwise to deny or withhold any housing accommodation, land
41 or commercial space or any facilities of any housing accommodation, land
42 or commercial space from any person or group of persons because of the
43 race, creed, color, national origin, sexual orientation, gender identity
44 or expression, military status, sex, age, disability, marital status, or
45 familial status of such person or persons.

46 (2) To print or circulate or cause to be printed or circulated any
47 statement, advertisement or publication, or to use any form of applica-
48 tion for the purchase, rental or lease of any housing accommodation,
49 land or commercial space or to make any record or inquiry in connection
50 with the prospective purchase, rental or lease of any housing accommo-
51 dation, land or commercial space which expresses, directly or indirect-
52 ly, any limitation, specification, or discrimination as to race, creed,
53 color, national origin, sexual orientation, gender identity or
54 expression, military status, sex, age, disability, marital status, or
55 familial status; or any intent to make any such limitation, specifica-
56 tion or discrimination.

1 (3) With respect to age and familial status, the provisions of this
2 paragraph shall not apply to the restriction of the sale, rental or
3 lease of any housing accommodation, land or commercial space exclusively
4 to persons fifty-five years of age or older and the spouse of any such
5 person, or to the restriction of the sale, rental or lease of any hous-
6 ing accommodation or land to be used for the construction or location of
7 housing accommodations for persons sixty-two years of age or older, or
8 intended and operated for occupancy by at least one person fifty-five
9 years of age or older per unit. In determining whether housing is
10 intended and operated for occupancy by persons fifty-five years of age
11 or older, Sec. 807 (b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the
12 federal Fair Housing Act of 1988, as amended, shall apply.

13 (d) It shall be an unlawful discriminatory practice for any real
14 estate board, because of the race, creed, color, national origin, sexual
15 orientation, gender identity or expression, military status, age, sex,
16 disability, marital status, or familial status of any individual who is
17 otherwise qualified for membership, to exclude or expel such individual
18 from membership, or to discriminate against such individual in the
19 terms, conditions and privileges of membership in such board.

20 (e) It shall be an unlawful discriminatory practice for the owner,
21 proprietor or managing agent of, or other person having the right to
22 provide care and services in, a private proprietary nursing home, conva-
23 lescent home, or home for adults, or an intermediate care facility, as
24 defined in section two of the social services law, heretofore
25 constructed, or to be constructed, or any agent or employee thereof, to
26 refuse to provide services and care in such home or facility to any
27 individual or to discriminate against any individual in the terms,
28 conditions, and privileges of such services and care solely because such
29 individual is a blind person. For purposes of this paragraph, a "blind
30 person" shall mean a person who is registered as a blind person with the
31 commission for the visually handicapped and who meets the definition of
32 a "blind person" pursuant to section three of chapter four hundred
33 fifteen of the laws of nineteen hundred thirteen entitled "An act to
34 establish a state commission for improving the condition of the blind of
35 the state of New York, and making an appropriation therefor".

36 (f) The provisions of this subdivision, as they relate to age, shall
37 not apply to persons under the age of eighteen years.

38 (g) It shall be an unlawful discriminatory practice for any person
39 offering or providing housing accommodations, land or commercial space
40 as described in paragraphs (a), (b), and (c) of this subdivision to make
41 or cause to be made any written or oral inquiry or record concerning
42 membership of any person in the state organized militia in relation to
43 the purchase, rental or lease of such housing accommodation, land, or
44 commercial space, provided, however, that nothing in this subdivision
45 shall prohibit a member of the state organized militia from voluntarily
46 disclosing such membership.

47 § 12. Paragraph (a) of subdivision 9 of section 296 of the executive
48 law, as amended by chapter 106 of the laws of 2003, is amended to read
49 as follows:

50 (a) It shall be an unlawful discriminatory practice for any fire
51 department or fire company therein, through any member or members there-
52 of, officers, board of fire commissioners or other body or office having
53 power of appointment of volunteer firefighters, directly or indirectly,
54 by ritualistic practice, constitutional or by-law prescription, by tacit
55 agreement among its members, or otherwise, to deny to any individual
56 membership in any volunteer fire department or fire company therein, or

1 to expel or discriminate against any volunteer member of a fire depart-
2 ment or fire company therein, because of the race, creed, color,
3 national origin, sexual orientation, gender identity or expression,
4 military status, sex or marital status of such individual.

5 § 13. Subdivision 13 of section 296 of the executive law, as amended
6 by chapter 196 of the laws of 2010, is amended to read as follows:

7 13. It shall be an unlawful discriminatory practice (i) for any person
8 to boycott or blacklist, or to refuse to buy from, sell to or trade
9 with, or otherwise discriminate against any person, because of the race,
10 creed, color, national origin, sexual orientation, gender identity or
11 expression, military status, sex, or disability of such person, or of
12 such person's partners, members, stockholders, directors, officers,
13 managers, superintendents, agents, employees, business associates,
14 suppliers or customers, or (ii) for any person wilfully to do any act or
15 refrain from doing any act which enables any such person to take such
16 action. This subdivision shall not apply to:

17 (a) Boycotts connected with labor disputes; or

18 (b) Boycotts to protest unlawful discriminatory practices.

19 § 14. Subdivisions 1, 2 and 3 of section 296-a of the executive law,
20 as amended by chapter 106 of the laws of 2003, are amended to read as
21 follows:

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

24 a. In the case of applications for credit with respect to the
25 purchase, acquisition, construction, rehabilitation, repair or mainte-
26 nance of any housing accommodation, land or commercial space to discrim-
27 inate against any such applicant because of the race, creed, color,
28 national origin, sexual orientation, gender identity or expression,
29 military status, age, sex, marital status, disability, or familial
30 status of such applicant or applicants or any member, stockholder,
31 director, officer or employee of such applicant or applicants, or of the
32 prospective occupants or tenants of such housing accommodation, land or
33 commercial space, in the granting, withholding, extending or renewing,
34 or in the fixing of the rates, terms or conditions of, any such credit;

35 b. To discriminate in the granting, withholding, extending or renew-
36 ing, or in the fixing of the rates, terms or conditions of, any form of
37 credit, on the basis of race, creed, color, national origin, sexual
38 orientation, gender identity or expression, military status, age, sex,
39 marital status, disability, or familial status;

40 c. To use any form of application for credit or use or make any record
41 or inquiry which expresses, directly or indirectly, any limitation,
42 specification, or discrimination as to race, creed, color, national
43 origin, sexual orientation, gender identity or expression, military
44 status, age, sex, marital status, disability, or familial status;

45 d. To make any inquiry of an applicant concerning his or her capacity
46 to reproduce, or his or her use or advocacy of any form of birth control
47 or family planning;

48 e. To refuse to consider sources of an applicant's income or to
49 subject an applicant's income to discounting, in whole or in part,
50 because of an applicant's race, creed, color, national origin, sexual
51 orientation, gender identity or expression, military status, age, sex,
52 marital status, childbearing potential, disability, or familial status;

53 f. To discriminate against a married person because such person
54 neither uses nor is known by the surname of his or her spouse.

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

1 2. Without limiting the generality of subdivision one of this section,
2 it shall be considered discriminatory if, because of an applicant's or
3 class of applicants' race, creed, color, national origin, sexual orien-
4 tation, gender identity or expression, military status, age, sex, mari-
5 tal status or disability, or familial status, (i) an applicant or class
6 of applicants is denied credit in circumstances where other applicants
7 of like overall credit worthiness are granted credit, or (ii) special
8 requirements or conditions, such as requiring co-obligors or reapplica-
9 tion upon marriage, are imposed upon an applicant or class of applicants
10 in circumstances where similar requirements or conditions are not
11 imposed upon other applicants of like overall credit worthiness.

12 3. It shall not be considered discriminatory if credit differen-
13 tiations or decisions are based upon factually supportable, objective
14 differences in applicants' overall credit worthiness, which may include
15 reference to such factors as current income, assets and prior credit
16 history of such applicants, as well as reference to any other relevant
17 factually supportable data; provided, however, that no creditor shall
18 consider, in evaluating the credit worthiness of an applicant, aggregate
19 statistics or assumptions relating to race, creed, color, national
20 origin, sexual orientation, gender identity or expression, military
21 status, sex, marital status or disability, or to the likelihood of any
22 group of persons bearing or rearing children, or for that reason receiv-
23 ing diminished or interrupted income in the future.

24 § 15. Paragraph (b) of subdivision 2 of section 296-b of the executive
25 law, as added by chapter 481 of the laws of 2010, is amended to read as
26 follows:

27 (b) Subject a domestic worker to unwelcome harassment based on gender,
28 race, religion, sexual orientation, gender identity or expression or
29 national origin, where such harassment has the purpose or effect of
30 unreasonably interfering with an individual's work performance by creat-
31 ing an intimidating, hostile, or offensive working environment.

32 § 16. Section 40-c of the civil rights law, as amended by chapter 2 of
33 the laws of 2002, is amended to read as follows:

34 § 40-c. Discrimination. 1. All persons within the jurisdiction of this
35 state shall be entitled to the equal protection of the laws of this
36 state or any subdivision thereof.

37 2. No person shall, because of race, creed, color, national origin,
38 sex, marital status, sexual orientation, gender identity or expression,
39 or disability, as such term is defined in section two hundred ninety-two
40 of the executive law, be subjected to any discrimination in his or her
41 civil rights, or to any harassment, as defined in section 240.25 of the
42 penal law, in the exercise thereof, by any other person or by any firm,
43 corporation or institution, or by the state or any agency or subdivision
44 of the state.

45 § 17. Paragraph (a) of subdivision 1 of section 313 of the education
46 law, as amended by chapter 2 of the laws of 2002, is amended to read as
47 follows:

48 (a) It is hereby declared to be the policy of the state that the Amer-
49 ican ideal of equality of opportunity requires that students, otherwise
50 qualified, be admitted to educational institutions and be given access
51 to all the educational programs and courses operated or provided by such
52 institutions without regard to race, color, sex, religion, creed, mari-
53 tal status, age, sexual orientation as defined in section two hundred
54 ninety-two of the executive law, gender identity or expression as
55 defined in section two hundred ninety-two of the executive law, or
56 national origin, except that, with regard to religious or denominational

1 educational institutions, students, otherwise qualified, shall have the
2 equal opportunity to attend therein without discrimination because of
3 race, color, sex, marital status, age, sexual orientation as defined in
4 section two hundred ninety-two of the executive law, gender identity or
5 expression as defined in section two hundred ninety-two of the executive
6 law, or national origin. It is a fundamental American right for members
7 of various religious faiths to establish and maintain educational insti-
8 tutions exclusively or primarily for students of their own religious
9 faith or to effectuate the religious principles in furtherance of which
10 they are maintained. Nothing herein contained shall impair or abridge
11 that right.

12 § 18. Subdivision 3 of section 313 of the education law, as amended by
13 chapter 2 of the laws of 2002, is amended to read as follows:

14 (3) Unfair educational practices. It shall be an unfair educational
15 practice for an educational institution after September fifteenth, nine-
16 teen hundred forty-eight:

17 (a) To exclude or limit or otherwise discriminate against any person
18 or persons seeking admission as students to such institution or to any
19 educational program or course operated or provided by such institution
20 because of race, religion, creed, sex, color, marital status, age, sexu-
21 al orientation as defined in section two hundred ninety-two of the exec-
22 utive law, gender identity or expression as defined in section two
23 hundred ninety-two of the executive law, or national origin; except that
24 nothing in this section shall be deemed to affect, in any way, the right
25 of a religious or denominational educational institution to select its
26 students exclusively or primarily from members of such religion or
27 denomination or from giving preference in such selection to such members
28 or to make such selection of its students as is calculated by such
29 institution to promote the religious principles for which it is estab-
30 lished or maintained. Nothing herein contained shall impair or abridge
31 the right of an independent institution, which establishes or maintains
32 a policy of educating persons of one sex exclusively, to admit students
33 of only one sex.

34 (b) To penalize any individual because he or she has initiated, testi-
35 fied, participated or assisted in any proceedings under this section.

36 (c) To accept any endowment or gift of money or property conditioned
37 upon teaching the doctrine of supremacy of any particular race.

38 (d) With respect to any individual who withdraws from attendance to
39 serve on active duty in the armed forces of the United States in time of
40 war, including any individual who withdrew from attendance on or after
41 August second, nineteen hundred ninety to serve on active duty in the
42 armed forces of the United States in the Persian Gulf conflict: (i) to
43 deny or limit the readmission of such individual to such institution or
44 to any educational program or course operated or provided by such insti-
45 tution because of such withdrawal from attendance or because of the
46 failure to complete any educational program or course due to such with-
47 drawal; (ii) to impose any academic penalty on such person because of
48 such withdrawal or because of the failure to complete any educational
49 program or course due to such withdrawal; (iii) to reduce or eliminate
50 any financial aid award granted to such individual which could not be
51 used, in whole or part, because of such withdrawal or because of the
52 failure to complete any educational program or course due to such with-
53 drawal; or (iv) to fail to provide a credit or refund of tuition and
54 fees paid by such individual for any semester, term or quarter not
55 completed because of such withdrawal or because of the failure to
56 complete any program or course due to such withdrawal.

1 (e) It shall not be an unfair educational practice for any educational
2 institution to use criteria other than race, religion, creed, sex,
3 color, marital status, age, sexual orientation as defined in section two
4 hundred ninety-two of the executive law, gender identity or expression
5 as defined in section two hundred ninety-two of the executive law, or
6 national origin in the admission of students to such institution or to
7 any of the educational programs and courses operated or provided by such
8 institution.

9 § 19. Section 485.00 of the penal law, as added by chapter 107 of the
10 laws of 2000, is amended to read as follows:
11 § 485.00 Legislative findings.

12 The legislature finds and determines as follows: criminal acts involv-
13 ing violence, intimidation and destruction of property based upon bias
14 and prejudice have become more prevalent in New York state in recent
15 years. The intolerable truth is that in these crimes, commonly and
16 justly referred to as "hate crimes", victims are intentionally selected,
17 in whole or in part, because of their race, color, national origin,
18 ancestry, gender, gender identity or expression, religion, religious
19 practice, age, disability or sexual orientation. Hate crimes do more
20 than threaten the safety and welfare of all citizens. They inflict on
21 victims incalculable physical and emotional damage and tear at the very
22 fabric of free society. Crimes motivated by invidious hatred toward
23 particular groups not only harm individual victims but send a powerful
24 message of intolerance and discrimination to all members of the group to
25 which the victim belongs. Hate crimes can and do intimidate and disrupt
26 entire communities and vitiate the civility that is essential to healthy
27 democratic processes. In a democratic society, citizens cannot be
28 required to approve of the beliefs and practices of others, but must
29 never commit criminal acts on account of them. Current law does not
30 adequately recognize the harm to public order and individual safety that
31 hate crimes cause. Therefore, our laws must be strengthened to provide
32 clear recognition of the gravity of hate crimes and the compelling
33 importance of preventing their recurrence.

34 Accordingly, the legislature finds and declares that hate crimes
35 should be prosecuted and punished with appropriate severity.

36 § 20. Subdivisions 1, 2 and 4 of section 485.05 of the penal law, as
37 added by chapter 107 of the laws of 2000, are amended to read as
38 follows:

39 1. A person commits a hate crime when he or she commits a specified
40 offense and either:

41 (a) intentionally selects the person against whom the offense is
42 committed or intended to be committed in whole or in substantial part
43 because of a belief or perception regarding the race, color, national
44 origin, ancestry, gender, gender identity or expression, religion, reli-
45 gious practice, age, disability or sexual orientation of a person,
46 regardless of whether the belief or perception is correct, or

47 (b) intentionally commits the act or acts constituting the offense in
48 whole or in substantial part because of a belief or perception regarding
49 the race, color, national origin, ancestry, gender, gender identity or
50 expression, religion, religious practice, age, disability or sexual
51 orientation of a person, regardless of whether the belief or perception
52 is correct.

53 2. Proof of race, color, national origin, ancestry, gender, gender
54 identity or expression, religion, religious practice, age, disability or
55 sexual orientation of the defendant, the victim or of both the defendant
56 and the victim does not, by itself, constitute legally sufficient

1 evidence satisfying the people's burden under paragraph (a) or (b) of
2 subdivision one of this section.

3 4. For purposes of this section:

4 (a) the term "age" means sixty years old or more;

5 (b) the term "disability" means a physical or mental impairment that
6 substantially limits a major life activity[.];

7 (c) the term "gender identity or expression" means having or being
8 perceived as having a gender identity, self-image, appearance, behavior
9 or expression whether or not that gender identity, self-image, appear-
10 ance, behavior or expression is different from that traditionally asso-
11 ciated with the sex assigned to that person at birth.

12 § 21. Subdivision 3 of section 240.30 of the penal law, as amended by
13 chapter 188 of the laws of 2014, is amended to read as follows:

14 3. With the intent to harass, annoy, threaten or alarm another person,
15 he or she strikes, shoves, kicks, or otherwise subjects another person
16 to physical contact, or attempts or threatens to do the same because of
17 a belief or perception regarding such person's race, color, national
18 origin, ancestry, gender, gender identity or expression, religion, reli-
19 gious practice, age, disability or sexual orientation, regardless of
20 whether the belief or perception is correct; or

21 § 22. The opening paragraph of section 240.31 of the penal law, as
22 amended by chapter 49 of the laws of 2006, is amended to read as
23 follows:

24 A person is guilty of aggravated harassment in the first degree when
25 with intent to harass, annoy, threaten or alarm another person, because
26 of a belief or perception regarding such person's race, color, national
27 origin, ancestry, gender, gender identity or expression, religion, reli-
28 gious practice, age, disability or sexual orientation, regardless of
29 whether the belief or perception is correct, he or she:

30 § 23. Section 240.00 of the penal law is amended by adding a new
31 subdivision 7 to read as follows:

32 7. "Gender identity or expression" means having or being perceived as
33 having a gender identity, self-image, appearance, behavior or expression
34 whether or not that gender identity, self-image, appearance, behavior or
35 expression is different from that traditionally associated with the sex
36 assigned to that person at birth.

37 § 24. Paragraph (c) of subdivision 7 of section 200.50 of the criminal
38 procedure law, as amended by chapter 7 of the laws of 2007, is amended
39 to read as follows:

40 (c) in the case of any hate crime, as defined in section 485.05 of the
41 penal law, specifies, as applicable, that the defendant or defendants
42 intentionally selected the person against whom the offense was committed
43 or intended to be committed; or intentionally committed the act or acts
44 constituting the offense, in whole or in substantial part because of a
45 belief or perception regarding the race, color, national origin, ances-
46 try, gender, gender identity or expression, religion, religious prac-
47 tice, age, disability or sexual orientation of a person; and

48 § 25. This act shall take effect on the thirtieth day after it shall
49 have become a law; provided, however, that sections nineteen through
50 twenty-four of this act shall take effect on the first of November next
51 succeeding the date on which it shall have become a law.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S61

SPONSOR: SQUADRON

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

PURPOSE OR GENERAL IDEA OF THE BILL:

To prohibit discrimination based on gender identity or expression, and include offenses regarding gender identity or expression under the hate crimes statute.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 declares the legislative intent.

Section 3 adds new subdivision 35 to section 292 of the Executive Law, defining of "gender identity or expression."

Other sections add "gender identity or expression" to the list of factors that prohibit discrimination, as follows:

| EXISTING LAW | PROVISIONS OF SECTION OR TYPE OF DISCRIMINATION ALREADY PROHIBITED |
|-----------------------------|---|
| Sec. 2 Exec. Law § 291 | Equality of opportunity defined as a civil right |
| Sec. 4 Exec. Law § 295 | Division of Human Rights powers and duties |
| Sec. 5 Exec. Law § 296(1) | Employers,licensing agencies, employment agencies and labor organizations |
| Sec. 6 Exec. Law § 296(1-a) | Apprenticeship training programs |
| Sec. 7 Exec. Law § 296(2) | Place of public accommodation, resort or amusement |
| Sec. 8 Exec. Law § 296(2-a) | Publicly-assisted housing |
| Sec. 9 Exec. Law § 296(3-b) | Realtors representing that a change has occurred or may |

| | |
|--------------------------------|--|
| | occur in the composition of a neighborhood |
| Sec. 10 Exec. Law § 296(4) | Non-sectarian education corporations or associations |
| Sec. 11 Exec. Law § 296(5) | Private housing accommodations and commercial space, keeping the exemption for small, owner-occupied housing |
| Sec. 12 Exec. Law § 296(9) | Volunteer fire department membership |
| Sec. 13 Exec. Law § 296(13) | Commercial boycotts and blacklists |
| Sec. 14 Exec. Law § 296-a | Credit |
| Sec. 16 Exec. Law § 40-c | Civil rights |
| Sec. 17 Exec. Law § 313(1) | Education institutions, without affecting the rights of religious education institutions |
| Sec. 18 Education Law § 313(3) | Unfair education practices |

Sections 18 through 23 add "gender identity or expression" to the list of factors that can make a "hate crime".

JUSTIFICATION:

The transgender community is not protected from discrimination under law. Transgender people whose gender identity, appearance, behavior or expression differs from their genetic sex at birth face discrimination in housing, employment, public accommodations and many other areas of life, and they are particularly vulnerable to hate crimes. Many people who supported the recent SONDA (the Sexual Orientation Non-discrimination Act) believed that it covered transgender discrimination. However, being transgender is not the same as being homosexual.

PRIOR LEGISLATIVE HISTORY:

2014: S195/A4226- REFERRED TO INVESTIGATIONS AND GOVERNMENT OPERATIONS/Passed Assembly
 2013: S195/A4226- REFERRED TO INVESTIGATIONS AND GOVERNMENT OPERATIONS/Passed Assembly
 2012: S6349/A5039- IGOV COMMITTEE DISCHARGED AND COMMITTED TO RULES/Passed Assembly
 2011: S6349/A5039- Passed Assembly
 2010: S2406/A5710- CONSIDERED BY JUDICIARY COMMITTEE/Passed Assembly
 2009: S2406/A5710- REFERRED TO INVESTIGATIONS AND GOVERNMENT OPERATIONS (Duane)/Passed Assembly
 2008: S3753/A6584- REFERRED TO INVESTIGATIONS AND GOVERNMENT OPERATIONS (Duane)/Passed Assembly

2007: S3753/A6584- REFERRED TO INVESTIGATIONS AND GOVERNMENT OPERATIONS
(Duane)/governmental operations reported and referred to codes

FISCAL IMPLICATIONS:

Minimal fiscal impact.

EFFECTIVE DATE:

Thirty days after it shall have become law, except sections 19 through 24 will be effective on the first of November next succeeding the date on which it shall have become law.