

Int. No. 815-B

By Council Members Lander, Chin, Johnson, Mendez, Rosenthal, King, Lancman, Constantinides, Van Bramer, Menchaca and Kallos

A Local Law to amend the administrative code of the city of New York, in relation to protecting the right to truthful information under the city human rights law and expressly providing a cause of action for employers and principals whose rights are violated by conduct to which their employees or agents are subjected

Be it enacted by the Council as follows:

Section 1. Subdivision 17 of section 8-102 of the administrative code of the city of New York, as added by local law number 39 for the year 1991, is amended to read as follows:

17. The term “covered entity” means a person required to comply with any provision of [section]sections 8-107 or 8-107.1 of this chapter.

§ 2. Section 8-102 of the administrative code of the city of New York is amended by adding a new subdivision 32 to read as follows:

32. a. The term “person aggrieved,” except as used in section 8-123, includes a person whose right created, granted or protected by this chapter is violated by a covered entity directly or through conduct of the covered entity to which the person’s agent or employee is subjected while the agent or employee was acting, or as a result of the agent or employee having acted, within the scope of the agency or employment relationship. For purposes of this subdivision, an agent or employee's protected status is imputed to that person's principal or employer when the agent or employee acts within the scope of the agency or employment relationship. It is irrelevant whether or not the covered entity knows of the agency or employment relationship.

b. A person is aggrieved even if that person’s only injury is the deprivation of a right granted or protected by this chapter.

c. This subdivision does not limit or exclude any other basis for a cause of action.

§ 3. Paragraphs (a), (b) and (c) of subdivision 1 of section 8-107 of the administrative code of the city of New York, as amended by local law number 85 for the year 2005, are amended to read as follows:

(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual orientation or alienage or citizenship status of any person[, to]:

(1) To represent that any employment or position is not available when in fact it is available;

(2) To refuse to hire or employ or to bar or to discharge from employment such person; or

[to](3) To discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency or an employee or agent thereof to discriminate against any person because of such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual orientation or alienage or citizenship status in receiving, classifying, disposing or otherwise acting upon applications for its services, including by representing to such person that any employment or position is not available when in fact it is available, or in referring an applicant or applicants for its services to an employer or employers.

(c) For a labor organization or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual orientation or alienage or citizenship status of any person, to exclude or to expel from its membership such person, to represent that membership is not available when it

is in fact available, or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

§ 4. Paragraph (b) of subdivision 2 of section 8-107 of the administrative code of the city of New York, as amended by local law number 85 for the year 2005, is amended to read as follows:

(b) To deny to or withhold from any person because of his or her actual or perceived race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual orientation or alienage or citizenship status the right to be admitted to or participate in, a guidance program, an apprentice training program, on-the-job training program, or other occupational training or retraining program, or to represent that such program is not available when in fact it is available.

§ 5. Paragraph a of subdivision 4 of section 8-107 of the administrative code of the city of New York, as amended by a local law for the year 2016 amending the administrative code of the city of New York, in relation to expanding the protections of the city of New York human rights law with regard to public accommodations, as proposed in introduction number 805-A, is amended to read as follows:

a. It shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation[, directly or indirectly]:

1. Because of any person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status, directly or indirectly:

(a) To refuse, withhold from or deny to [any]such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation [because of such person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status]; or

(b) To represent to any person that any accommodation, advantage, facility or privilege of any such place or provider of public accommodation is not available when in fact it is available;
or

2. [To]Directly or indirectly to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that:

(a) Full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, facilities and privileges of any such place or provider of public accommodation shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status; or

(b) The patronage or custom of any person is unwelcome, objectionable, not acceptable, undesired or unsolicited because of such person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status.

§ 6. Subparagraphs 1, 2 and 3 of paragraph (a) of subdivision 5 of section 8-107 of the administrative code of the city of New York, as amended by local law number 10 for the year 2008,

are amended to read as follows:

(1) Because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of any person or group of persons, or because of any lawful source of income of such person or persons, or because children are, may be or would be residing with such person or persons:

(a) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any such person or group of persons such a housing accommodation or an interest therein[because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because of any lawful source of income of such person or persons, or because children are, may be or would be residing with such person or persons.

(2)];

(b) To discriminate against any such person [because of such person's actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or because of any lawful source of income of such person, or because children are, may be or would be residing with such person,] or persons in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith[.

(3)]; or

(c) To represent to such person or persons that any housing accommodation or an interest

therein is not available for inspection, sale, rental or lease when in fact it is available to such person.

(2) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or an interest therein or to make any record or inquiry in conjunction with the prospective purchase, rental or lease of such a housing accommodation or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or any lawful source of income, or whether children are, may be, or would be residing with a person, or any intent to make such limitation, specification or discrimination.

§ 7. Paragraph (b) of subdivision 5 of section 8-107 of the administrative code of the city of New York, as amended by local law number 85 for the year 2005, is amended to read as follows:

(b) Land and commercial space. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, or lease, or approve the sale, rental or lease of land or commercial space or an interest therein, or any agency or employee thereof:

(1) Because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of any person or group of persons, or because children are, may be or would be residing with any person or persons:

(A) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny or to withhold from any such person or group of persons land or commercial space or an interest therein [because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons.

(2)];

(B) To discriminate against any such person [because of actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or because children are, may be or would be residing with such person,] or persons in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or an interest therein or in the furnishing of facilities or services in connection therewith[.

(3)]; or

(C) To represent to any person or persons that any land or commercial space or an interest therein is not available for inspection, sale, rental or lease when in fact it is available.

(2) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or an interest therein or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status,

partnership status, or alienage or citizenship status, or whether children are, may be or would be residing with such person, or any intent to make any such limitation, specification or discrimination.

§ 8. Paragraph (d) of subdivision 5 of section 8-107 of the administrative code of the city of New York, as amended by local law number 85 for the year 2005, is amended to read as follows:

(d) Lending practices. (1) It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company, or other financial institution or lender, doing business in the city [and if incorporated regardless of whether], including unincorporated entities and entities incorporated [under the laws of the state of New York, the United States or] in any [other] jurisdiction, or any officer, agent or employee thereof to whom application is made for a loan, mortgage or other form of financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space or an interest therein: [(1)]

(A) To discriminate against such applicant [or applicants because] in the granting, withholding, extending or renewing, or in the fixing of rates, terms or conditions of any such financial assistance or in the appraisal of any housing accommodation, land or commercial space or an interest therein:

(i) Because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status of such applicant [or applicants or of], any member, stockholder, director, officer or employee of such

applicant [or applicants], or [of] the occupants or tenants or prospective occupants or tenants of such housing accommodation, land or commercial space[,]; or [because]

(ii) Because children are, may be or would be residing with such applicant or other person[, in the granting, withholding, extending or renewing, or in the fixing of rates, terms or conditions of any such financial assistance or in the appraisal of any housing accommodation, land or commercial space or an interest therein].

[(2)](B) To use any form of application for a loan, mortgage, or other form of financial assistance, or to make any record or inquiry in connection with applications for such financial assistance, or in connection with the appraisal of any housing accommodation, land or commercial space or an interest therein, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status, or whether children are, may be, or would be residing with a person.

(2) It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company, or other financial institution or lender, doing business in the city, including unincorporated entities and entities incorporated in any jurisdiction, or any officer, agent or employee thereof to represent to any person that any type or term of loan, mortgage or other form of financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of such housing accommodation, land or commercial space or an interest therein is not available when in fact it is available:

(A) Because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status of such person, any member, stockholder, director, officer or employee of such person, or the occupants or tenants or prospective occupants or tenants of such housing accommodation, land or commercial space; or

(B) Because children are, may be or would be residing with a person.

§ 9. Paragraph (e) of subdivision 5 of section 8-107 of the administrative code of the city of New York, as amended by local law number 85 for the year 2005, is amended to read as follows:

(e) Real estate services. It shall be an unlawful discriminatory practice, because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status of any person or because children are, may be or would be residing with such person:

[to](1) To deny [a]such person access to, [or] membership in or participation in[,] a multiple listing service, real estate brokers' organization, or other service _[because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status of such person or because children are, may be or would be residing with such person]; or

(2) To represent to such person that access to or membership in such service or organization is not available, when in fact it is available.

§ 10. Paragraph (n) of subdivision 5 of section 8-107 of the administrative code of the city of New York, as added by local law number 39 for the year 1991, is amended to read as follows:

(n) Discrimination on the basis of occupation prohibited in housing accommodations.

Where a housing accommodation or an interest therein is sought or occupied exclusively for residential purposes, the provisions of this subdivision shall be construed to prohibit discrimination on account of a person's occupation in [the]:

(1) The sale, rental, or leasing of such housing accommodation or interest therein [and in the]:

(2) The terms, conditions and privileges of the sale, rental or leasing of such housing accommodation or interest therein [and in the furnishing of]:

(3) Furnishing facilities or services in connection therewith[, on account of a person's occupation]; and

(4) Representing whether or not such housing accommodation or interest therein is available for sale, rental, or leasing.

§ 11. Subparagraph (1) of paragraph (a) of subdivision 9 of section 8-107 of the administrative code of the city of New York, as amended by local law 63 for the year 2015, is amended to read as follows:

(1) Except as otherwise provided in paragraph [(c)]c of this subdivision, for an agency authorized to issue a license, registration or permit or an employee thereof to falsely deny the availability of such license, registration or permit, or otherwise discriminate against an applicant, or a putative or prospective applicant for a license, registration or permit because of the actual or perceived race, creed, color, national origin, age, gender, marital status, partnership status, disability, sexual orientation or alienage or citizenship status of such applicant.

§ 12. Subdivision 9 of section 8-107 of the administrative code of the city of New York is amended by adding a new paragraph (e) to read as follows:

(e) The provisions of this subdivision shall be enforceable against public agencies and employees thereof by a proceeding brought pursuant to article 78 of the civil practice law and rules.

§ 13. Paragraph a of subdivision 11-a of section 8-107 of the administrative code of the city of New York, as added by local law number 63 for the year 2015, is amended to read as follows:

(a) In addition to the restrictions in subdivision 11 of this section, it shall be an unlawful discriminatory practice for any employer, employment agency or agent thereof to:

(1) Declare, print or circulate or cause to be declared, printed or circulated any solicitation, advertisement or publication, which expresses, directly or indirectly, any limitation, or specification in employment based on a person's arrest or criminal conviction; [or]

(2) Because of any person's arrest or criminal conviction, represent that any employment or position is not available, when in fact it is available to such person; or

(3) Make any inquiry or statement related to the pending arrest or criminal conviction record of any person who is in the process of applying for employment with such employer or agent thereof until after such employer or agent thereof has extended a conditional offer of employment to the applicant. For purposes of this subdivision, with respect to an applicant for temporary employment at a temporary help firm as such term is defined by subdivision five of section 916 of article 31 of the [New York]labor law, an offer to be placed in the temporary help firm's general candidate pool shall constitute a conditional offer of employment. For purposes of this subdivision, "any inquiry" means any question communicated to an applicant in writing or otherwise, or any

searches of publicly available records or consumer reports that are conducted for the purpose of obtaining an applicant's criminal background information[. For purposes of this subdivision], and "any statement" means a statement communicated in writing or otherwise to the applicant for purposes of obtaining an applicant's criminal background information regarding: (i) an arrest record; (ii) a conviction record; or (iii) a criminal background check.

§ 14. Subdivision 11-b of section 8-107 of the administrative code of the city of New York, as added by local law number 63 for the year 2015, is amended to read as follows:

11-b. Arrest record; credit application. For purposes of issuing credit, it shall be an unlawful discriminatory practice, unless specifically required or permitted by any other law, to:

(a) [~~deny~~]Deny or act adversely upon any person seeking credit by reason of an arrest or criminal accusation of such person when such denial or adverse action is in violation of subdivision 16 of section 296 of article 15 of the [New York state]executive law; [or]

(b) [~~make~~]Make any inquiry in writing or otherwise, regarding any arrest or criminal accusation of a person seeking credit when such inquiry is in violation of subdivision 16 of section 296 of article 15 of the [New York state]executive law; or

(c) Because of any arrest or criminal accusation of a person seeking credit, represent to such person that credit is not available, when in fact it is available to such person.

§ 15. Subparagraph (1) of paragraph a of subdivision 21 of section 8-107 of the administrative code of the city of New York, as added by local law number 14 for the year 2013, is amended to read as follows:

(1) Except as provided in paragraphs b and c of this subdivision, an employer,

employment agency, or agent thereof shall not[base];

(a) Because of a person's unemployment, represent that any employment or position is not available when in fact it is available; or

(b) Base an employment decision with regard to hiring, compensation or the terms, conditions or privileges of employment on an applicant's unemployment.

§ 16. Subdivision b of section 8-107.1 of the administrative code of the city of New York, as renumbered and amended by a local law for the year 2016 amending the administrative code of the city of New York, in relation to prohibiting discrimination in housing accommodations on the basis of an individual's status as a victim of domestic violence, as proposed in introduction number 832-a, is amended to read as follows:

b. Unlawful discriminatory practices. 1. (a) It shall be an unlawful discriminatory practice for an employer, or an agent thereof, [to]because of any individual's actual or perceived status as a victim of domestic violence, or as a victim of sex offenses or stalking:

(1) To represent that any employment or position is not available when in fact it is available;

(2) To refuse to hire or employ or to bar or to discharge from employment[.]; or [to]

(3) To discriminate against an individual in compensation or other terms, conditions, or privileges of employment[because of the actual or perceived status of said individual as a victim of domestic violence, or as a victim of sex offenses or stalking].

[(a)](b) Requirement to make reasonable accommodation to the needs of victims of domestic violence, sex offenses or stalking. Except as provided in subparagraph [(c)](d), any

person prohibited by paragraph 1 from discriminating on the basis of actual or perceived status as a victim of domestic violence or a victim of sex offenses or stalking shall make reasonable accommodation to enable a person who is a victim of domestic violence, or a victim of sex offenses or stalking to satisfy the essential requisites of a job provided that the status as a victim of domestic violence or a victim of sex offenses or stalking is known or should have been known by the covered entity.

[(b)](c) Documentation of status. Any person required by subparagraph [(a)](b) to make reasonable accommodation may require a person requesting reasonable accommodation pursuant to subparagraph [(a)](b) to provide certification that the person is a victim of domestic violence, sex offenses or stalking. The person requesting reasonable accommodation pursuant to subparagraph [(a)](b) shall provide a copy of such certification to the covered entity within a reasonable period after the request is made. A person may satisfy the certification requirement of this paragraph by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider, from whom the individual seeking a reasonable accommodation or that individual's family or household member has sought assistance in addressing domestic violence, sex offenses or stalking and the effects of the violence or stalking; a police or court record; or other corroborating evidence. All information provided to the covered entity pursuant to this paragraph, including a statement of the person requesting a reasonable accommodation or any other documentation, record, or corroborating evidence, and the fact that the individual has requested or obtained a reasonable accommodation pursuant to this section, shall be retained in

the strictest confidence by the covered entity, except to the extent that disclosure is requested or consented to in writing by the person requesting the reasonable accommodation; or otherwise required by applicable federal, state or local law.

~~[(c)](d)~~ Affirmative defense in domestic violence, sex offenses or stalking cases. In any case where the need for reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job or enjoy the right or rights in question.

2. (a) It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof, ~~[to]because of any individual's actual or~~ perceived status as a victim of domestic violence, or as a victim of sex offenses or stalking:

(1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation or an interest therein, or to discriminate in the terms, conditions, or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith because of an actual or perceived status of said individual as a victim of domestic violence, or as a victim of sex offenses or stalking; or

(2) To represent that such housing accommodation or an interest therein is not available when in fact it is available.

~~[(a)]~~(b) The provisions of this paragraph 2 shall not apply:

(1) ~~[to]~~To the rental of a housing accommodation, other than a publicly-assisted housing accommodation, in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of the owner's family reside in one of such housing accommodations, and if the available housing accommodation has not been publicly advertised, listed, or otherwise offered to the general public; or

(2) ~~[to]~~To the rental of a room or rooms in a housing accommodation, other than a publicly-assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation.

§ 17. Subdivision a of section 8-502 of the administrative code of the city of New York, as amended by local law number 11 for the year 1993, and subdivision f of such section, as amended by local law number 71 for the year 2013, are amended to read as follows:

a. Except as otherwise provided by law, any person claiming to be a person aggrieved by an unlawful discriminatory practice as defined in chapter ~~[one]~~1 of this title or by an act of discriminatory harassment or violence as set forth in chapter ~~[six]~~6 of this title shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate, unless such person has filed a complaint with the city commission on human rights or with the state division of human rights with respect to such alleged unlawful discriminatory practice or act of discriminatory harassment or violence. For purposes of this subdivision, the filing of a complaint with a federal agency pursuant

to applicable federal law prohibiting discrimination which is subsequently referred to the city commission on human rights or to the state division of human rights pursuant to such law shall not be deemed to constitute the filing of a complaint under this subdivision.

f. The provisions of this section which provide a cause of action to persons claiming to be persons aggrieved by an act of discriminatory harassment or violence as set forth in chapter [six]6 of this title shall not apply to acts committed by members of the police department in the course of performing their official duties as police officers whether the police officer is on or off duty. This subdivision shall in no way affect rights or causes of action created by [Section]section 14-151[of the Administrative Code of the City of New York].

§ 18. Section 8-502 of the administrative code of the city of New York is amended by adding a new subdivision h to read as follows:

h. 1. The term “person aggrieved” includes a person whose right created, granted or protected by chapters 1 or 6 of this title is violated by a covered entity directly or through conduct of the covered entity to which the person’s agent or employee is subjected while the agent or employee was acting, or as a result of the agent or employee having acted, within the scope of the agency or employment relationship. For purposes of this subdivision, an agent or employee’s protected status is imputed to that person’s principal or employer when the agent or employee acts within the scope of the agency or employment relationship. It is irrelevant whether or not the covered entity knows of the agency or employment relationship.

2. A person is aggrieved even if that person’s only injury is the deprivation of a right granted or protected by chapters 1 or 6 of this title.

3. This subdivision does not limit or exclude any other basis for a cause of action.

§ 19. This local law takes effect 120 days after it becomes law, except that: a. Section five takes effect on the later of 120 days after it becomes law or the date that a local law amending the administrative code of the city of New York relating to expanding the protections of the city of New York human rights law with regard to public accommodations, as proposed in introduction number 805-A for the year 2016, takes effect;

b. Section twelve takes effect immediately and shall be deemed to have been in effect as of October 27, 2015; and

c. Section fourteen takes effect on the later of 120 days after it becomes law or the date that a local law amending the administrative code of the city of New York relating to prohibiting discrimination in housing accommodations on the basis of an individual's status as a victim of domestic violence, as proposed in introduction number 832-A for the year 2016, takes effect.