

**GOVERNOR'S PROGRAM BILL**

**2013**

**MEMORANDUM**

AN ACT to amend the labor law, in relation to the prohibition of differential pay because of sex (Part A); to amend the executive law, in relation to unlawful discriminatory practices (Part B); to amend the executive law, in relation to the provision of attorney's fees in cases of housing, employment or credit discrimination; to amend the executive law, in relation to the awarding of reasonable attorney's fees (Part C); to amend the executive law in relation to the unlawful discriminatory practice because of familial status (Part D); to amend the executive law, in relation to domestic violence victim status and lawful source of income (Part E); to amend the family court act, the criminal procedure law and the domestic relations law, in relation to the duties of interpreters appointed by the courts in certain cases; to amend the domestic relations law, the family court act and the criminal procedure law, in relation to the scope of orders of protection and temporary orders of protection (Part F); to amend the family court act and judiciary law, in relation to establishing a pilot program for the filing of petitions for temporary orders of protection by electronic means and for issuance of such orders ex parte by audio-visual means (Part G); to amend the penal law, the criminal procedure law, the social services law, the mental hygiene law, the correction law, the vehicle and traffic law, the public health law, the real property actions and proceedings law, and the real property law, in relation to enacting the "trafficking victims protection and justice act" (Part H); to amend the executive law, in relation to reasonable accommodation (Part I); and to amend the public health law, in relation to access to reproductive services (Part J)

**Purpose:**

This bill would enact The Women's Equality Act, which would break down barriers that perpetuate discrimination and inequality based on gender. New York State has a proud history and tradition of leading the nation in progressive ideals and reforms. This is especially so with respect to women's rights. In 1848, the women's suffrage movement was born at the first Women's Rights Convention in Seneca Falls, New York. From that moment in time and continuing through today, the state has been the home of female leaders and visionaries, from Elizabeth Cady Stanton who initiated the first organized women's rights and women's suffrage movements, to Audre Lorde, a leading African-American poet and essayist who gave voice to women's issues, and Gloria Steinem, the journalist, author and activist. These New Yorkers have served as role models for not only their generation but for every generation to come.

Over the years, New York has fallen behind in its role as a progressive leader on women's rights. Today, statistics clearly show that women in New York State are not treated equally to men. Study after study shows gender inequality in our communities where women are paid less than men for the same work, women face discrimination in the workplace based on familial status and pregnancy, and women face discrimination in housing because of their source of income or domestic violence victim status. Further, the State still maintains antiquated laws on reproductive health that are not in line with federal law and State practice.

The Women's Equality Act will break down barriers that perpetuate discrimination and inequality based on gender. New York has served as a model for equality and fairness on several issues including women's rights. The Women's Equality Act will return the State to its rightful place as a leader on women's equality.

**Summary of Provisions:**

Section 1 of the bill names the act as the "Women's Equality Act".

Section 2 of the bill sets forth Parts A through J:

Part A would amend Labor L. § 194, which prohibits a differential in rate of pay because of sex, to replace the current "any other factor other than sex" exception with an exception that requires that the differential in rate of pay must be based on a bona fide factor other than sex such as education, training or experience. Such a factor could not be based on a sex-based differential, and must be job-related and consistent with business necessity. This standard would mirror the current defense afforded to employers in disparate impact cases under Title VII of the Civil Rights Act. The exception would not apply if there was an alternative employment practice that would accomplish the same business purpose and the employer has refused to adopt such a practice. Additionally, § 194 would be amended to clarify that a differential in pay may not exist even if the two employees whose rate of pay is being compared work in different physical locations, provided that those locations are in the same geographic region. § 194 would also be amended to forbid employers from prohibiting employees from sharing wage information. This

protection helps guarantee the individual state right of equal pay, without interfering with current federal provisions regarding collective protected activity aimed at “mutual aid and protection”.

This Part would also:

- amend § 198 of the Labor Law to raise the liquidated damages allowed for violations of § 194 to up to 300% of the wages found to be due; and
- require the Department of Labor and the Division of Human Rights to make training available to employers to assist them in preventing discrimination and harassment in the workplace.

Part B would amend Exec. L. § 292 to apply the existing provisions of the Human Rights Law to employers with fewer than four employees in cases of sexual harassment.

Part C would amend Exec. L. § 297 to provide for attorney’s fees in employment or credit discrimination cases when sex is a basis of discrimination and retain the existing allowance for attorney’s fees in housing and housing related credit cases. It would similarly amend Exec. L. § 296-a to permit the awarding of attorney’s fees in credit discrimination cases when sex is a basis of discrimination in matters brought before the Department of Financial Services.

Part D would amend Exec. L. § 296 law to prohibit discrimination in employment based on familial status.

Part E would amend Exec. L. § 296 to prohibit discrimination in housing based on domestic violence victim status or lawful source of income. It would provide that credit reports may still be obtained by owners, lessees, sub-lessees, assignees, or managing agents and that the sale, rental or lease of commercial space may still be denied based on the type of commercial activity that will take place in the space. This Part would also exempt the source of income provisions for housing accommodations that contain five or fewer units, if those accommodations are in municipalities that contain a local law regarding source of income discrimination that have the same exemption.

Part F would amend the Family Court Act, the Criminal Procedure Law, and the Domestic Relations Law to require that where an interpreter has been appointed by a court to assist in an order of protection proceeding, the court must direct the interpreter to translate any order of protection or temporary order of protection into the appropriate language on the record. It would also amend the Family Court Act, the Criminal Procedure Law, and the Domestic Relations Law to make clear that a protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate such order and that the protected party cannot be arrested for violating such order.

Part G would amend the Family Court Act and the Judiciary Law to allow for the

development and establishment of a pilot program in family courts for the remote petitioning and issuance by audio-visual means of temporary orders of protection.

Part H would amend the Penal Law and several other provisions of law to address human trafficking. The Penal Law would be amended to:

- conform the ages of victims in certain prostitution offenses under Article 230 to the ages of victims of rape offenses under Article 130;
- make sex trafficking a class B violent felony and labor trafficking a class B felony;
- provide an affirmative defense for defendants being prosecuted under prostitution and loitering statutes that the defendant's participation was the result of being a victim of sex trafficking;
- improve the school zone prostitution law by adding as a class E felony the offense of patronizing a person for prostitution in a school zone;
- remove the scienter requirement in the offense of promoting prostitution in a school zone;
- eliminate the term "prostitute" and replace it with "person for prostitution";
- add three new sections, 230.11, 230.12 and 230.13, to create three new aggravated patronizing offenses where the person patronized is a minor: aggravated patronizing a minor for prostitution in the third degree, a class E felony; aggravated patronizing a minor for prostitution in the second degree, a class D felony; and aggravated patronizing a minor for prostitution in the first degree, a class B felony (Section 14); and
- provide that a person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by knowingly advancing prostitution of a person less than 18 years old, aligning New York State law to federal law.

In addition, this Part would provide that an established provider of social or legal services designated by the Office of Temporary and Disability Assistance (OTDA), the Office for the Prevention of Domestic Violence (OPDV), or the Office of Victim Services (OVS) is authorized to notify OTDA and the Division of Criminal Justice Services that a person who reasonably appears to be a human trafficking victim may be eligible for services.

Part I would amend Exec. L. § 296 to clarify that employers must provide reasonable accommodations to employees with pregnancy-related conditions. A pregnancy-related condition would be defined as a medical condition related to pregnancy or childbirth. A reasonable accommodation would not have to be granted if it imposed an undue hardship on an employer. Additionally, a pregnancy-related condition would be treated as a temporary disability for the purposes of current Division of Human Rights regulations regarding reasonable accommodations. It would also clarify that the requirements regarding reasonable accommodations for disabilities or pregnancy-related conditions do not apply to other protected classes.

Part J would amend the Public Health Law to protect a woman's right to obtain an abortion when the fetus is not viable, or when necessary to protect a woman's life or health as determined by a licensed physician as established in Roe v. Wade in 1973. This part would further prohibit any prosecution or proceeding under the Penal Law for any action authorized by this section or permitted by the Public Health Law and Education Law. This part would also repeal Penal L. §§125.05(2), 125.05(3), 125.15(2), 125.20(3), 125.40, 125.45, 125.50, 125.55, and 125.60 to the extent they are inconsistent with this Part. Part J would also make clear that nothing in the amendment shall conflict with any applicable state or federal law or regulation permitting a health care provider to refrain from providing abortions due to the provider's religious or moral beliefs.

Section 3 of the bill is a severability clause.

Section 4 of the bill establishes the effective dates of the bill and its parts.

**Existing Law:**

This bill would impact existing protections that are available under the Labor Law and the Executive Law. It also would impact existing provisions of law regarding orders of protection. It would modify existing laws regarding sex and labor trafficking and prostitution offenses, as well as the Public Health Law.

**Statement in Support:**

New York State has a proud history and tradition of leading the nation in progressive ideals and reforms. This is especially so with respect to women's rights. In 1848, the women's suffrage movement was born at the first Women's Rights Convention in Seneca Falls, New York. From that moment in time and continuing through today, the state has been the home of female leaders and visionaries, from Elizabeth Cady Stanton who initiated the first organized women's rights and women's suffrage movements, to Audre Lorde, a leading African-American poet and essayist who gave voice to women's issues, and Gloria Steinem, the journalist, author and activist. These New Yorkers have served as role models for not only their generation but for every generation to come.

Over the years, New York has fallen behind in its role as a progressive leader on women's rights. Today, statistics clearly show that women in New York State are not treated equally to men. Study after study shows gender inequality in our communities where women are paid less than men for the same work, women face discrimination in the workplace based on familial status and pregnancy, and women face discrimination in housing because of their source of income or domestic violence victim status. Further, the State still maintains antiquated laws on reproductive health that are not in line with federal law and State practice. The Women's Equality Act would accomplish major reforms, including:

- **Achieving Pay Equity**

Wage disparities have a detrimental effect on society. Individuals are put at an economic disadvantage because of characteristics that bear no relationship to their job performance. Such disparities prevent maximum utilization of labor in the state economy. Additionally, policies adopted by employers that discourage or prohibit employees from sharing information about their earnings can contribute to unjust wage disparities going undetected. Despite existing protections under the law, women in New York earn 84 percent of what men earn and jobs traditionally held by women pay significantly less than jobs predominately employing men. In New York, on average, a woman working full time is paid \$42,113 per year, while a man working full time is paid \$50,388 per year. This creates a wage gap of \$8,275 between full-time working men and women in the state.

This bill would amend existing law to ensure that women receive the wages they were always entitled to, as well as provide for increased additional damages. Individuals who were paid unequal wages would be entitled to liquidated damages of up to 300% of the amount of unpaid wages. Existing exemptions in the law would be tightened so that pay differentials are excused where the employer can show that the differential is truly caused by something other than sex and is related to job performance and consistent with business necessity. Employers would also be prohibited from forbidding employees from sharing wage information that would otherwise deny women workers the ability to discover whether their wages are unequal to their male counterparts.

- **Stopping Sexual Harassment in All Workplaces**

Sexual harassment disproportionately affects women in the workplace. In 2011, women filed 75% of all sexual harassment complaints filed at the New York State Division of Human Rights and 83% of all sexual harassment complaints filed at the Equal Employment Opportunity Commission. However, those persons working for employers with fewer than 4 employees cannot file a complaint with the State, because small employers are currently exempt from the provisions of State law that prohibit harassment—and more than 60% of the state's private employers have fewer than 4 employees. This bill would amend the law to protect workers from sexual harassment regardless of the size of the workplace. Under the amended law, an employee of any business, large or small, may file a complaint for sexual harassment.

- **Allowing for the Recovery of Attorney's Fees in Employment and Credit and Lending Cases**

Under existing law, an individual cannot recover attorney's fees for employment and credit and lending discrimination cases even after proving discrimination at trial. As a result (a) many who are discriminated against but cannot afford to hire an attorney never seek redress; (b) those who hire an attorney on a contingency fee arrangement are not "made whole" for their losses because they must pay for their attorneys out of their recovery; and (c) some who cannot

afford to hire an attorney, but who try to do so on a contingency basis, are unsuccessful because the case is either too small or too risky. This bill would allow for reasonable attorney's fees in employment and credit discrimination cases when sex is a basis of discrimination.

- **Ending Familial Status Discrimination**

Women with children are less likely to be recommended for hire and promoted, and, in most cases, are offered less in salary than similarly situated men. This type of discrimination impacts those who are perhaps most in need—70% of children living with single mothers are poor or low income. Currently, State law protects against familial status discrimination in housing, but not employment. This bill would prohibit employers from denying work or promotions to workers simply based on their familial status.

- **Stopping Source of Income Discrimination**

Female-headed households account for 76% of all housing choice vouchers issued, including Section 8 vouchers. Many households suffer discrimination by landlords who are unwilling to rent to voucher holders. For housing vouchers to be meaningful, enough units must be made available for tenants. Providing this protection is invaluable in maximizing a voucher family's ability to secure safe and decent housing. This bill would prohibit discrimination in housing based on lawful source of income.

- **Stopping Housing Discrimination for Victims of Domestic Violence**

Discrimination against victims of domestic violence is almost always discrimination against women. Of all victims of domestic violence, 85% are women; an estimated 1.3 million women are victims of assault by an intimate partner each year, and about 1 in 4 women will experience intimate partner violence in their lifetimes. Under current State law, victims of domestic violence have no protection from discrimination in housing. This bill would amend the Human Rights Law to protect victims of domestic violence from discrimination when they attempt to purchase, rent, lease, or inhabit housing.

- **Protecting Victims of Domestic Violence by Strengthening Order of Protection Laws**

Women face too many obstacles in securing protection from their abusers. For example, some victims of domestic violence require immediate temporary orders of protection, but have no means to travel to the appropriate family court. To protect victims of domestic violence, and ensure that they are able to secure much-needed orders of protection, this provision would allow the Office of Court Administration to develop a pilot program to allow victims to petition for temporary orders of protection remotely.

- **Strengthening Human Trafficking Laws**

Human trafficking is a crime that exploits vulnerable individuals through force, fraud or coercion. For both sex and labor trafficking, victims are made to act against their will and in many cases, are forced or coerced into committing crimes. For victims of sex trafficking, who are almost always women, the crime is often prostitution.

While New York has one of the most comprehensive anti-human trafficking laws in the country, this bill would strengthen the existing law to: (a) remove the requirement that “coercion” be proven when the victims are minors; (b) increase penalties for trafficking; and (c) create an affirmative defense in prostitution prosecutions that a defendant’s participation was a result of having been a sex trafficking victim. These amendments will deter human trafficking, make prosecution and enforcement more effective, and solidify New York’s status as a leader among the states in protecting vulnerable individuals subject to exploitation.

- **Stopping Pregnancy Discrimination Once and For All**

Conditions related to childbirth and pregnancy can result in impairment requiring accommodation. Some pregnant workers require modest adjustments on the job for conditions related to pregnancy and childbirth in order to stay healthy and keep working. Employees may require a stool to sit on, extra restroom breaks, transfer away from hazardous duties, a temporary reprieve from heavy lifting, or a reasonable time for childbirth recovery. In order to adequately protect the rights of pregnant workers, it is necessary to create a specific protection in the Human Rights Law requiring employers to provide a reasonable accommodation for pregnancy-related conditions, unless doing so would create an undue hardship. While the Division of Human Rights has long interpreted the sex and disability protections of the Human Rights Law to encompass pregnancy-related conditions, recent Court decisions have contributed to the already considerable confusion as to the availability and extent of this protection. The purpose of this bill is to codify the Division’s existing interpretation of the law while not depriving women of any of their existing protections under the disability and sex discrimination provisions of the law.

- **Protecting a Woman’s Freedom of Choice**

This section of the bill codifies the alignment of State law with existing federal law. In Roe v. Wade, 410 U.S. 113 (1973), the United States Supreme Court ruled that the United States Constitution protects a woman’s right to have an abortion prior to fetal viability or when necessary to protect the health and life of the woman. Although current State law does not have all of these protections, this has, in fact and in law, been the law in New York for over forty years. This proposal would not change or alter existing State and federal laws that permit a health care provider or institutions from refraining from providing an abortion for religious or moral beliefs. This bill would not expand the class of individuals who could perform abortions, nor would it alter the current long-standing criminal ban on partial birth abortion. The bill

simply codifies the reproductive rights that women in New York have had since Roe.

**Budget Implications:**

This bill has no budget implications for the State.

**Effective Date:**

This bill would take effect 90 days after enactment, except for Part G, which would take effect on April 1, 2014, and Part J which would take effect 30 days after enactment.