

# Proposed Local Law Number 16 Of 2016

## County Of Ulster

### A Local Law Establishing A Comprehensive Ulster County Human Rights Law

**BE IT ENACTED**, by the Legislature of the County of Ulster, as follows:

#### **SECTION 1. TITLE.**

This Local Law shall be known by and may be cited as “The Ulster County Human Rights Law”.

#### **SECTION 2. LEGISLATIVE INTENT AND FINDINGS.**

The Ulster County Legislature hereby finds that there is no greater danger to the health, morals, safety, and welfare of the County than the existence of prejudice, intolerance, and antagonism among its residents because of their actual or perceived differences, including those based on race, color, religion, ethnicity, creed, age, national origin, alienage or citizenship status, familial status, gender, marital status, sexual orientation or disability.

The Ulster County Legislature finds and determines there to be a need to prohibit acts of discrimination, including discrimination in employment, discrimination in public accommodations, discrimination in housing accommodation, discrimination in commercial space and land transactions, and discrimination in the issuing of credit. The Ulster County Legislature finds that the adoption of this law is an appropriate exercise of the police power for the protection of the public welfare, health and peace of the people of this County.

#### **SECTION 3. DEFINITIONS.**

As used in this Chapter, the following terms shall be defined as follows:

- a. “County” shall refer to the County of Ulster.
- b. “County Attorney” shall refer to the Ulster County Attorney.

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c. "Commercial property" shall refer to any property in a building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; and any property which is used or occupied, or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building, structure or portion thereof.

d. "Creditor", when used in this chapter, shall refer to any person or financial institution which does business in this state and which extends credit or arranges for the extension of credit by others. The term creditor includes, but is not limited to, banks and trust companies, private bankers, foreign banking corporations and national banks, savings banks, licensed lenders, savings and loan associations, credit unions, finance companies, insurance premium finance agencies, insurers, credit card issuers, mortgage brokers, mortgage companies, mortgage insurance corporations, wholesale and retail merchants and factors, whatever the form of their organization.

e. "Disability" shall refer to (1) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of an unimpaired bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques; or (2) a record of such an impairment; or (3) a condition regarded by others as such an impairment, provided, however, that in all provisions of this chapter dealing with employment, the term shall be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.

f. "Discrimination" shall include, but shall not be limited to, segregation, separation, harassment, physical intimidation and acts of hate and physical violence.

g. "Employee" as referred to in this Local Law does not include any individual employed by his or her parents, spouse or child nor does the term "employee" include any individual in the domestic service of any person nor does

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the term "employee" include any person employed, hired or engaged as an independent contractor or to conduct or supply any personal services included but not limited to tutoring, mentoring, private or personal instruction, personal training, home or child care services.

h. "Employer" shall refer to any person(s) with at least four persons in their employ, provided, however, such term shall not include an employer where at least two-thirds of the employees are the children, parents, spouse or relatives within the third degree of consanguinity, or the spouses thereof, of such employer.

i. "Employment agency" shall include any person undertaking to procure employees or opportunities to work.

j. "Gender" shall include actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

k. "Group identity" shall refer to race, color, religion, age, national origin (including ancestry), alienage or citizenship status, ethnicity, familial status, creed, gender, sexual orientation, marital status, or disability.

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

m. "Necessary party" shall mean any person who has such an interest in the subject matter of a proceeding under this chapter, or whose rights are so involved, that no complete and effective disposition can be made without his or her participation in the proceeding.

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n. "Parties to the proceeding" shall mean the complainant, respondent, necessary parties and persons permitted to intervene as parties in a proceeding with respect to a complaint filed under this chapter.

o. "Person" includes one or more natural persons, proprietorships, partnerships (including limited liability partnerships, and limited partnerships), associations, group associations, corporations (including limited liability corporations), legal representatives, trustees, trustees in bankruptcy, or receivers.

p. "Place of public accommodation, resort or amusement" shall be defined as the term is defined in New York State Executive Law Section 292(9), but shall also include any place within Ulster County that is open to the general public.

q. "Real estate broker" shall mean any person, firm or corporation who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate, or negotiates or offers or attempts to negotiate, a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate. In connection with the sale of lots pursuant to the provisions of Article Nine-A of the Real Property Law, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

r. "Real estate sales person" shall mean a person employed by a licensed real estate broker to list for sale, sell or offer for sale, at auction or otherwise, to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate, or to negotiate a loan on real estate, or to lease or rent or offer to lease, rent or place for rent any real estate, or who collects or offers or attempts to collect rent for the use of real estate for or on behalf of such real estate broker.

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s. “Reasonable accommodation” shall mean actions taken which permit an employee, prospective employee or member (1) with a disability, or (2) who is a victim of domestic violence, sexual abuse or stalking, to perform in a reasonable manner the activities involved in the job or occupation sought or held and include, but are not limited to, provision of an accessible worksite, acquisition or modification of equipment, support services for persons with impaired hearing or vision, job restructuring and modified work schedules, or some form of protection or security measure; provided, however, that such actions do not impose an undue hardship on the business, program or enterprise of the entity from which action is requested.

t. “Sexual orientation” shall mean heterosexuality, homosexuality or bisexuality.

u. “Unlawful discriminatory practice” includes only those practices specified in Section 4 through Section 9 of this chapter which occurred in Ulster County.

v. Victim of domestic violence, sexual abuse or stalking.

1. A victim of domestic violence shall mean:

(a) any person who has been subjected to an act or series of acts that:

(1) would constitute a misdemeanor, felony or other violation of law against the person as defined in state or federal law; or

(2) would constitute a misdemeanor, felony or other violation of law against property as defined in state or federal law.

(b) Such act or series of acts as defined in subdivision (a) must have been committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or a person who is or has continually or at regular intervals lived in the same household as the victim.

(c) Such act or series of acts as defined in subdivision (a) and (b) must also

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(1) result in the actual physical or emotional injury of the person whether or not such conduct has actually resulted in criminal charges, prosecution or conviction; or

(2) create a substantial risk of physical or emotional harm to such person whether or not such conduct has actually resulted in criminal charges, prosecution or conviction.

2. A victim of sexual abuse or stalking shall mean any person who has been:

(a) a victim of an act or series of acts which would constitute a violation of article 130 of the penal law; or

(b) a victim of an act of series of acts which would constitute a violation of section 120.45, 120.50, 120.55, or 120.60 of the penal law.

3. A victim of domestic violence, sexual abuse or stalking shall also include any individual that is perceived to be a person who has been, or is currently being, subjected to acts or series of acts as set forth in subdivision 1 and 2 above.

**SECTION 4. UNLAWFUL DISCRIMINATORY PRACTICES IN EMPLOYMENT.**

a. It shall be an unlawful discriminatory practice:

1. For an employer or an employee or an agent thereof to refuse to hire or employ or bar or discharge from employment any person because of such person's actual or perceived group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking, or credit history, or to discriminate against any person in compensation or in terms, conditions or privileges of employment because of such person's actual or perceived group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking or credit history.

2. For an employment agency or an employee or agent thereof to discriminate against a person, because of such person's actual or perceived group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking, in receiving, classifying, disposing or otherwise acting upon

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applications for its services or in referring an applicant for its services to an employer.

3. For a labor organization, or an employee or agent thereof, to exclude or to expel from its membership an individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer because of such individual's actual or perceived group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking, including, but not limited to, discrimination in admission to or participation in apprenticeship or other occupational training or retraining programs.

4. For any employer, labor organization, or employment agency, or an employee or agent of an employer, labor organization or employment agency, to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination as to group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

5. For an employer or an employee or an agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forego a practice of his or her religion which practice he or she regularly and customarily observes, including but not limited to the observance of any particular day or days or any portion thereof as a Sabbath or holy day or the observance of any religious custom or usage, and the employer shall make reasonable accommodations to the religious needs of such person. Without in any way limiting the foregoing, no person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of such person's religion, he or she regularly and customarily observes as a Sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home, provided, however, that any such

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absence from work shall, when requested by the employer and whenever practicable in the judgment of the employer, be made up by an equivalent amount of time at some other mutually convenient time. The provisions of this subparagraph shall not be construed to apply to any position dealing with health or safety where the person holding such position must be available for duty whenever needed. The provisions of this subparagraph shall not be construed to apply to any position or class of positions the nature and quality of the duties of which are such that the personal presence of the holder of such position is regularly essential on any particular day or days or portion thereof for the normal performance of such duties with respect to any applicant therefor or holder thereof who, as a requirement of his religion, regularly or customarily observes such day or days or portion thereof as his or her Sabbath or other holy day. The provisions of this subparagraph shall not apply where the uniform application of terms and conditions of attendance to employees is essential to prevent undue economic hardship to the employer.

6. For any employer, labor organization or employment agency, or an employee or agent of an employer, labor organization or employment agency, to discharge, expel or otherwise discriminate against any person because he or she has: (i) opposed any practices forbidden under this chapter; or (ii) filed a complaint, testified or assisted in any proceeding under this chapter; or (iii) commenced a civil action against such employer, labor organization or employment agency, or employee or agent thereof, which action alleges the commission of an unlawful discriminatory practice; or (iv) participated with the commission or its members or counsel in any investigation; or (v) provided information to the commission or its members or counsel in any investigation.

7. For an employer to compel an employee who is pregnant to take a leave of absence, unless the employee is prevented by such pregnancy from performing the activities involved in the job or occupation in a reasonable manner or unless the employer made or offered to make reasonable accommodations to the employee, which accommodations were declined by the employee.

8. For an employer, licensing agency, employment agency or labor organization to refuse to provide reasonable accommodations to the known



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disabilities of an employee, prospective employee or member or to a victim of domestic violence, sexual abuse or stalking in connection with a job or occupation sought or held or participation in a training program. Nothing contained in this subdivision shall be construed to require provision of accommodations which can be demonstrated to impose an undue hardship on the operation of an employer's, licensing agency's, employment agency's or labor organization's business, program or enterprise. In making such a demonstration with regard to undue hardship the factors to be considered include: (i) the overall size of the business, program or enterprise with respect to the number of employees, number and type of facilities, and size of budget; (ii) the type of operation which the business, program or enterprise is engaged in, including the composition and structure of the workforce; and (iii) the nature and cost of the accommodation needed.

b. The provisions of this section:

1. As applicable to employee benefit plans, shall not be construed to preclude an employer from observing the provisions of any plan covered by the Federal Employment Retirement Income Security Act of 1974 that is in compliance with federal discrimination laws where the application of the provisions of such subdivisions to such plan would be preempted by such act;

2. Shall not preclude the varying of insurance coverage according to an employee's age;

3. Shall not be construed to effect any retirement policy or system that is permitted pursuant to paragraphs (e) and (f) of subdivision three-a of Section 296 of the Executive Law;

4. Shall not be construed to affect the retirement policy or system of an employer where such policy or system is not a subterfuge to evade the purpose of this chapter; and

5. Shall not preclude any employer from making any lawful inquiry as to the alienage or citizenship status of any employee or prospective employee and shall not preclude any employer from refusing to hire or employ, or barring or

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discharging from employment, any person not lawfully eligible for such employment.

6. Shall protect a victim of domestic violence, sexual abuse or stalking against employment discrimination if said individual chooses to provide the employer documentation certifying his or her status as a victim of domestic violence, sexual abuse or stalking. Certification establishing such status shall be sufficient in the form of any of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual abuse or stalking;

(b) A court order protecting the employee from the perpetrator of an act of domestic violence, sexual abuse or stalking or other evidence from the court or prosecuting attorney that the employee has appeared in court; or

(c) Documentation from a medical professional, domestic violence advocate, health care provider, a member of the clergy or counselor that the employee was undergoing treatment for, or seeking assistance to address, physical or mental injuries or abuse resulting from domestic violence, sexual abuse or stalking. This certification is only required to assist victims, where appropriate, who choose to invoke the protections and benefits of the Ulster County Human Rights Law as well as to assist employers in their assessment of the situation and, if necessary, to enable them to provide reasonable accommodations. The employer shall retain all such information received from a victim of domestic violence, sexual abuse or stalking in the strictest confidence, except to the extent that such disclosure (1) is necessary to provide for a reasonable accommodation; or (2) otherwise required pursuant to applicable federal, state or local law.

7. Shall not apply to an employer or an employee or an agent thereof (1) that has been informed of the employee's status as a victim of domestic violence, sexual abuse or stalking; and (2) where such employer provides a reasonable accommodation to enable a victim of domestic violence, sexual abuse or stalking to perform the functions of his or her employment.

8. Shall not apply to an employer or an employee or an agent thereof where no adverse employment action has been taken against the individual as a result of the person's status as a victim of domestic violence, sexual abuse or stalking.

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9. Shall not apply to an employer or an employee or an agent thereof if the victim of domestic violence, sexual abuse or stalking failed to provide the employer or an employee or an agent thereof with documentation certifying that he or she is a victim of domestic violence, sexual abuse or stalking, except that it shall apply if an employer or an employee or an agent thereof perceives an individual to be a victim of domestic violence, sexual abuse or stalking.

**SECTION 5. UNLAWFUL DISCRIMINATORY PRACTICES IN PLACES OF PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT.**

a. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the actual or perceived group identity of any person or because of such person's status as a victim of domestic violence, sexual abuse or stalking, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, including the extension of credit, or, directly or indirectly, to declare, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of actual or perceived group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking, or that the patronage or custom thereof of any person of or purporting to be of any particular group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking, is unwelcome, objectionable or not acceptable, desired or solicited.

b. Nothing in this section shall be construed to prevent the barring of any person, because of the gender of such person, from places of public accommodations, resort or amusement based on bona fide considerations of public policy, nor shall this subdivision apply to the rental of rooms in a housing accommodation that restricts such rental to individuals of one gender.

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c. Notwithstanding anything in this chapter to the contrary, membership or participation in, or employment by, civic organizations, such as community associations, homeowners associations, crime prevention organizations, neighborhood associations, and scouting organizations, shall not be considered public accommodations within the meaning of this section.

**SECTION 6. UNLAWFUL DISCRIMINATORY PRACTICES IN THE SALE, LEASE OR RENTAL OF LAND OR COMMERCIAL PROPERTY.**

a. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of, or the right to sell, rent or lease, or the right to approve the sale, rental or lease of, land or commercial property or an interest therein:

1. To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons land or commercial property because of the actual or perceived group identity of such person or persons or because of such person's status as a victim of domestic violence, sexual abuse or stalking;

2. To discriminate against any person because of his or her actual or perceived group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking, in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial property or in the furnishing of facilities or services in connection therewith; or

3. 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 property or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial property which expresses, directly or indirectly, any limitation, specification or discrimination as to group identity or because of a person's status as a victim of domestic violence, sexual abuse or stalking; or any intent to make any such limitation, specification or discrimination.

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b. The provisions of paragraph a., solely with respect to age, shall not apply to the restriction of the sale, rental or lease of land or commercial property exclusively to persons 55 years of age or older and the spouse of any such person.

c. It shall be an unlawful discriminatory practice for a real estate salesperson, real estate broker, real estate listing service, or any employee or agent thereof:

1. To refuse to sell, rent or lease any land or commercial property to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any land or commercial property or any interest therein to any person or group of persons because of the actual or perceived group identity of such person or persons or because of such person's status as a victim of domestic violence, sexual abuse or stalking, or to represent that any land or commercial property or any interest therein is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any land or commercial property or any facilities of any land or commercial property or any interest therein from any person or group of persons because of the actual or perceived group identity of such person or persons or because of such person's status as a victim of domestic violence, sexual abuse or stalking; or

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 any land or commercial property or to make any record or inquiry in connection with the prospective purchase, rental or lease of any land or commercial property which expresses, directly or indirectly, any limitation, specification, or discrimination as to group identity or because of such person's status as a victim of domestic violence, sexual abuse or stalking; or any intent to make any such limitation, specification or discrimination.

d. The provisions of paragraph c., solely with respect to age, shall not apply to the restriction of the sale, rental or lease of land or commercial property exclusively to persons 55 years of age or older and the spouse of any such person.

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e. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof or any other individual, corporation (including a limited liability corporation), partnership (including a limited partnership or a limited liability partnership) or any other organization used for the purpose of inducing a real estate transaction from which any such person or any of its stockholders or members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to group identity or a person's status as a victim of domestic violence, sexual abuse or stalking of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities.

f. It shall be an unlawful discriminatory practice for any real estate board, or any board of directors of any condominium corporation or cooperative apartment corporation, because of the actual or perceived group identity of any individual or because of such person's status as a victim of domestic violence, sexual abuse or stalking, who is otherwise qualified for membership, to exclude or expel such individual from ownership of any unit or apartment or from membership on any such board, or to discriminate against such individual in the terms, conditions and privileges of ownership of any unit or apartment or of membership on any such board.

g. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, land or commercial property to refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by the said person, if the modifications may be necessary to afford the said person full enjoyment of the premises, in conformity with the provisions of the New York State Uniform Fire Prevention and Building Code and any local fire or building code applying stricter standards than the New York State Code, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a

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modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

h. The provisions of this section, as they relate to age, shall not apply to persons under the age of 18 years.

**SECTION 7. UNLAWFUL DISCRIMINATORY PRACTICES IN  
RELATION TO CREDIT.**

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

1. In the case of applications for credit with respect to the purchase, acquisition, construction, rehabilitation, repair, maintenance or refinancing of any land or commercial property or any interest therein to discriminate against any such applicant because of the actual or perceived group identity of such applicant or applicants or any member, stockholder, director, officer or employee of such applicant or applicants, or of the prospective occupants or tenants of such land or commercial property, in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any such credit; or in the appraisal of any land or commercial property conducted in connection with any such application;

2. To discriminate in the appraisal of land or commercial property, conducted in connection with an application for credit, on the basis of group identity;

3. To discriminate in the granting; withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any form of credit, on the basis of group identity;

4. To use any form of application for business or personal credit or use or make any record or inquiry which expresses, directly or indirectly, any limitation, specification, or discrimination as to group identity;

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

6. To refuse to consider sources of an applicant's income or to subject an applicant's income to discounting, in whole or in part, because of applicant's actual or perceived group identity;

7. To discriminate against a married person because such person neither uses nor is known by the surname of his or her spouse, except that this provision shall not be applicable to any situation where the use of a surname would constitute or result in a criminal act.

b. Without limiting the generality of paragraph a., it shall be considered discriminatory if, because of an applicant's or class of applicant's perceived or actual group identity:

1. An applicant or class of applicants is denied credit in circumstances where other applicants of like overall credit worthiness are granted credit; or

2. Special requirements or conditions, such as requiring co-obligors or reapplication upon marriage, are imposed upon an applicant or class of applicants in circumstances where similar requirements or conditions are not imposed upon other applicants of like overall credit worthiness.

c. Notwithstanding any provision of this section to the contrary, it shall not be considered discriminatory if credit differentiations or decisions are based upon factually supportable, objective differences in applicants' overall credit worthiness, which may include reference to such factors as current income, assets and prior credit history of such applicants, as well as reference to any other relevant factually supportable data; provided, however, that no creditor shall consider, in evaluating the credit worthiness of an applicant, aggregate statistics or assumptions relating to group identity, or to the likelihood of any group of persons bearing or rearing children, or for that reason receiving diminished or interrupted income in the future.



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d. Notwithstanding any provision of this section to the contrary, it shall not be an unlawful discriminatory practice to consider age in determining credit worthiness when age has a demonstrable and statistically sound relationship to a determination of creditworthiness.

**SECTION 8. ADDITIONAL PROVISIONS DEFINING  
DISCRIMINATORY PRACTICES.**

a. It shall be an unlawful discriminatory practice for any person to solicit, request, command, importune, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so, provided that: (1) a person shall not be held liable for a violation of this chapter if his or her conduct consists solely of speech or expressive conduct that is not done with intent that a discriminatory act be committed by another person and that does not solicit, request, command, importune, compel or intentionally aid another person to commit a discriminatory act; and (2) nothing in this chapter shall be construed as prohibiting or proscribing any conduct which is protected from governmental prohibition or regulation by the constitutions of the United States or the State of New York.

b. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate against any person because he or she: (1) has opposed any practices forbidden under this chapter; or (2) has filed a complaint, testified, assisted or participated in any proceeding under this chapter; or (3) has commenced a civil action against such employer, labor organization or employment agency, or employee or agent thereof, which action alleges the commission of an unlawful discriminatory practice; or (4) has participated in or assisted the commission or its members or counsel in any investigation; or (5) has provided information to the commission or its members or counsel in any investigation which information was given as a verified statement not later found to lack veracity.

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c. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to Section 12 of this chapter to violate the terms of such agreement.

d. Nothing contained in this chapter shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting participation in any activity (including, but not limited to employment, education, or sales or rental of land or commercial property) to, or granting admission to, or giving preference to, persons of the same religion or denomination or from taking such action as is calculated by such organization to promote the religious principles for which it is established or maintained.

e. Nothing in this chapter shall be deemed to affect, in any way, the right of a religious or denominational educational institution to select its students exclusively or primarily from members of such religion or denomination or from giving preference in such selection to such members or to make such selection of its students as is calculated by such institution to promote the religious principles for which it is established or maintained. Nothing in this chapter shall impair or abridge the right of an independent institution, which establishes or maintains a policy of educating persons of one gender exclusively, to admit students of only one gender or to employ administrators and teachers on its faculty of the same gender.

f. Nothing in this chapter shall be deemed to affect, in any way, the right of a religious or denominational educational institution licensed by the State of New York to establish curricula and lessons, to select educational materials and programs, or otherwise determine the content and substance of the education to be afforded to its students and, in particular, to develop curricula and lessons and to select educational materials and programs in order to promote the religious principles for which the institution was established or maintained. Nor shall it be an unlawful discriminatory practice for any religious or denominational educational institution licensed by the State of New York to educate its students in

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accordance with the religious beliefs and principles for which such institution was established or maintained.

g. Notwithstanding any other provision of this chapter to the contrary, it shall not be an unlawful discriminatory practice for an employer, employment agency, labor organization or joint labor-management committee to carry out a plan, approved by the New York State Division of Human Rights, to increase the employment of members of a minority group (as may be defined pursuant to the regulations of the division), which has a state-wide unemployment rate that is disproportionately high in comparison with the state-wide unemployment rate of the general population.

**SECTION 9. RELATIONS WITH COUNTY DEPARTMENTS AND AGENCIES.**

So far as practicable, and subject to the approval of the County Executive, the services of all other County departments and agencies shall be made available by their respective heads to assist the commission with respect to matters within its jurisdiction. Upon reasonable request of the commission, the head of any department or agency shall, in so far as practicable, provide the commission with public records in the possession of such department or agency to the commission, except that nothing herein contained shall compel the disclosure of public records which are exempt from disclosure pursuant to the provisions of the Public Officers Law.

**SECTION 10. COMPLAINTS OF DISCRIMINATION; PROCEDURE.**

a. Except as otherwise provided in this chapter, any person claiming to be aggrieved by an unlawful discriminatory practice may, personally or by an attorney at law, make, sign and file with the commission a verified complaint in writing which shall set forth the name and address of the person alleged to have committed the unlawful discriminatory practice complained of, the particulars thereof, and such other information as may be required by the commission. The

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commission shall not accept any complaint for filing unless it is accompanied by a waiver and relinquishment, duly subscribed by the complainant and duly acknowledged in the manner required to entitle a deed to be recorded, of any and all rights to file a complaint with the New York State Division of Human Rights, any federal civil rights agencies, such as the Department of Housing and Urban Development ("HUD") or the Equal Employment Opportunity Commission ("EEOC"), or with the commission on human rights of any city, town or village located in Ulster County, which is based upon the same transaction or occurrence or series of transactions or occurrences which are the subject of the complaint sought to be filed with the commission. The complainant may utilize the services of the County Clerk's Office in order to have his or her signature notarized on any documents required in connection with the filing of a complaint for the purposes of this section. The commission shall promulgate and make available appropriate forms of complaints and waivers.

b. A complainant may withdraw a complaint at any time prior to the service of an answer by the respondent. Subsequent to the service of an answer by the respondent, the complainant may withdraw a complaint, provided, however, that, upon application by the respondent, the commission may preclude the complainant from subsequently filing any complaint with the commission based upon the same transactions or occurrences or series of transactions or occurrences as the complaint which was withdrawn.

c. The Commissioner of Human Rights or designee may initiate a complaint alleging that a respondent has engaged in a pattern or series of unlawful discriminatory practices as set forth in this chapter affecting more than one person. Such complaint shall be signed and verified by the Commissioner and shall set forth the name and address of the person alleged to have committed the unlawful discriminatory practices complained of and the particulars thereof, together with such other information as may be required by the commission. In any complaint initiated by the Commissioner, the relief awarded by the commission in the event of a finding that the respondent has committed the unlawful discriminatory practices complained of shall be limited to the relief authorized in paragraph h. of this section. The Commissioner may withdraw a complaint at any time prior to the service of an answer by the respondent, provided, however, that, upon application

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by the respondent, the commission may preclude the Executive Director from subsequently filing any complaint based upon the same transactions or occurrences or series of transactions or occurrences as the complaint which was withdrawn. The Commissioner shall serve notice of such withdrawal by mail upon persons aggrieved by the unlawful discriminatory practices complained of, to the extent that such persons are identified. If not otherwise precluded from doing so by the commission pursuant to paragraph b. of this section, such persons shall be permitted to file a complaint pursuant to paragraph a. of this section based upon the same transactions or occurrences or series of transactions or occurrences as the complaint which was withdrawn by the Commissioner. Such persons may file a complaint within the time period provided for in Section 11 or within 30 days of the service of withdrawal notice by the Commissioner, whichever is greater.

d. Within 30 days after the filing of any complaint, the commission shall serve a copy thereof by mail upon the respondent and all persons it deems to be necessary parties. Within 60 days after a complaint is filed, the commission shall determine whether it has jurisdiction. If the commission determines that it has jurisdiction, it shall determine, within 180 days of the filing of the complaint, whether there is probable cause to believe that the person named in the complaint, hereinafter referred to as the respondent, has engaged or is engaging in an unlawful discriminatory practice. If it finds with respect to any respondent that it lacks jurisdiction or that probable cause does not exist, the commission shall issue an order dismissing the complaint as to such respondent, which order shall be served by mail upon all necessary parties to the proceeding.

e. If in the judgment of the commission the circumstances so warrant, it may, at any time after the filing of the complaint, endeavor to eliminate any unlawful discriminatory practice by any method of dispute resolution prescribed by rule of the commission including, but not limited to, mediation and conciliation. The commission may enter into an agreement with any respondent resolving the complaint by agreement ("conciliation agreement"). Such conciliation agreement may include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and may contain such further provisions as may be agreed upon by the commission and the respondent, including a provision for the entry of an order in the New York State Supreme

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Court, County of Ulster, or in such other County where the respondent resides or maintains an office for the transaction of business, containing the terms of the conciliation agreement. Prior to entering into a conciliation agreement, the commission shall provide a copy thereof to the complainant by mail. If the complainant agrees to the terms of the agreement or fails to object to such terms within 15 days after it was mailed to the complainant, the commission may proceed to enter into the agreement. If the complainant desires to object to the agreement he or she shall specify such objections in writing and file same with the commission within 15 days after the proposed agreement was mailed to the complainant. Upon review of such objections, the commission may make such order as it, in its sole discretion, may find to be just and proper, including (a) an order approving the conciliation agreement; (b) an order dismissing the complaint; and (c) an order scheduling a hearing on the complaint. Any statement made by any complainant or by any respondent during any alternate dispute resolution process conducted by, or on behalf of, the commission shall not be admitted into evidence during any hearing or proceeding before the commission and shall not be utilized in any fashion in any proceeding to either enforce or review any determination of the commission, unless the party making the statement affirmatively authorizes, in writing, the admission of the statement. The failure or refusal of any party to participate in the alternate dispute resolution process, or the failure or refusal of any party to accept a recommendation by any mediator as to the resolution of the matter, shall not be admissible in any hearing or proceeding before the commission.

f. Where the commission has found that it has jurisdiction over the complaint and that there is probable cause to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice, and if alternative dispute resolution pursuant to paragraph e. above is either not initiated or does not resolve the complaint, the commission shall issue and cause to be issued and served a written notice requiring the respondent to answer the charges of such complaint and appear at a public hearing upon reasonable notice at a time and place to be fixed by the commission and specified in the notice. At least two business days prior to the hearing the respondent shall, and any necessary party may, file a written answer to the complaint with the commission and serve a copy upon all other parties to the proceeding. If the respondent fails to answer the complaint, the

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commission may enter the default and the hearing shall proceed on the evidence in support of the complaint. Such default may be set aside for good cause shown upon such terms and conditions as may be just.

g. A respondent who has filed an answer, or whose default in answering has been set aside for good cause shown may appear at such public hearing in person or otherwise, with or without counsel, cross examine witnesses and the complainant and submit testimony. Attempts at conciliation, or statements made during such attempts, shall not be received in evidence. The complainant and all parties shall be allowed to present testimony in person or by counsel and cross examine witnesses. Subpoenas shall be issued in the manner provided for in the civil practice law and rules to compel the attendance of witnesses or to require the production of any relevant evidence before the commission. The testimony taken at the hearing shall be under oath and a record made. Hearings may be conducted directly before the commission or the commission may refer the hearing to an administrative law judge to conduct the hearing and render a written report, containing recommendations as to findings and, if appropriate, relief, to the commission. To the extent practicable, administrative law judges should be attorneys-at-law admitted to practice law in the State of New York. At the conclusion of the hearing, or as soon thereafter as may be practicable, the commission shall issue its determination, stating its findings of fact.

h. In the event that the commission shall, after a hearing, determine that a respondent has committed an unlawful discriminatory practice, it shall issue an order containing such of the following provisions as may, in the judgment of the commission, effectuate the purposes of this chapter:

1. Requiring such respondent to cease and desist from such unlawful discriminatory practice;
2. Requiring such respondent to take such affirmative action to remedy the unlawful discriminatory practice, including such of the following as may be applicable and appropriate; hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations,

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advantages, facilities and privileges to all persons, evaluating applicants for membership in a place of accommodation without discrimination based on group identity or because of a person's status as a victim of domestic violence, sexual abuse or stalking, and without retaliation or discrimination based on opposition to practices forbidden by this chapter or filing a complaint, testifying or assisting in any proceeding under this chapter;

3. Awarding of compensatory damages, including, but not limited to: actual damages, back pay, front pay, mental anguish and emotional distress, to the person aggrieved by such practice;

4. Fines issued against a respondent found to have committed an unlawful discriminatory practice which is found to be willful, wanton or malicious shall be levied in accordance with the scale below;

1 – 9 (Employees) cannot exceed \$100.00

10 – 19 (Employees) cannot exceed \$250.00

20 – 29 (Employees) cannot exceed \$500.00

30 and up (Employees) cannot exceed \$1000.00

5. Awarding costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees to the person aggrieved by such practice; and

6. Requiring the respondent to report of the manner of compliance.

i. A copy of each order issued by the commissioner shall be delivered in all cases to the County Executive, Chair of the Legislature via the Clerk of the Legislature, and to the County Attorney.

j. The commission shall establish rules of practice or procedure to govern, expedite and effectuate the foregoing procedure and its own actions thereunder, provided that such rules are not inconsistent with the provisions hereof.

k. The commission, in its discretion, may award to any party or attorney in any proceeding before it costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct, as defined in paragraph 1. below. Where the award is against an attorney, it may be against the attorney personally or upon the partnership, firm,



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corporation, or limited liability partnership or corporation with which the attorney is a member, is associated or that has appeared as attorney of record. The award may be imposed upon any attorney appearing in the proceeding or upon a partnership, firm, corporation, or limited liability partnership or corporation with which the attorney is associated. An award may be made either upon application of a party or by the commission, upon its own initiative, after a reasonable opportunity to be heard is provided to all parties. The form of the hearing shall depend upon the nature of the conduct and the circumstances of the proceeding.

l. For purposes of paragraph k. above, conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; or (2) it is undertaken primarily to delay or prolong the resolution of the proceeding or to harass or maliciously injure another; or (3) it asserts material factual statements that are false. Frivolous conduct shall include the making of a frivolous application for an award under paragraph k. above. In determining whether the conduct undertaken was frivolous, the commission shall consider, among other issues, (1) the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; and (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

m. Every pleading, written motion or other paper, served on another party or filed or submitted to the commission shall be signed by an attorney or by a party if the party is not represented by an attorney, with the name of the attorney or party clearly printed or typed directly below the signature. Absent good cause shown, the commission shall strike any unsigned paper if the omission of the signature is not corrected promptly after being called to the attention of the attorney or party. By signing a paper, an attorney or party certifies that, to the best of that person's knowledge, information or belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper or the contents thereof are not frivolous as defined in paragraph 1. above. In the event that the paper or the contents thereof is found by the commission to be frivolous, as defined in paragraph 1. above, then the commission may award costs, pursuant to paragraph k. above.

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n. The commission may award costs pursuant to paragraph k. above only upon a written decision setting forth the conduct on which the award or imposition is based, the reasons why the commission found the conduct to be frivolous, and the reasons why the commission found the amount awarded or imposed to be appropriate. An award of costs shall be set forth in an order of the commission enforceable pursuant to Section 14.

o. In the event that a complaint shall be filed with the commission in which a respondent is the County of Ulster or is an officer or employee of the County of Ulster and the complaint relates to conduct of such officer or employee committed within the scope of his or her official duties or employment with the County of Ulster, then the commission shall, in lieu of the procedures set forth previously in this section, immediately refer the complaint to the New York State Division of Human Rights for determination.

**SECTION 11. COMPLAINTS OF DISCRIMINATION; LIMITATIONS.**

Except as otherwise provided in Section 14, any complaint filed with the commission pursuant to Section 11 of this chapter must be filed within one year after the occurrence of the alleged unlawful discriminatory practice.

**SECTION 12. TEMPORARY INJUNCTIONS.**

At any time after the filing of a complaint with the commission alleging an unlawful discriminatory practice under this chapter if the commission determines that the respondent is doing or procuring to be done any act tending to render ineffectual any order the commission may enter in such proceeding, the commission may, by the County Attorney, apply to the New York State Supreme Court, in Ulster County, or in such other County where the respondent resides or maintains an office for the transaction of business, for a temporary injunction and for a temporary restraining order. The order to show cause may contain a temporary restraining order and shall be served in the manner provided therein, on the return date of the order to show cause, and after affording all parties an

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opportunity to be heard, if the court deems it necessary to prevent the respondent from rendering ineffectual an order relating to the subject matter of the complaint, it may grant appropriate injunctive relief upon such terms and conditions as it deems proper.

#### **SECTION 13. JURISDICTIONAL LIMITATIONS.**

a. Except as otherwise provided in subdivision b. hereof, the commission shall not have jurisdiction to entertain or initiate a complaint where:

1. The complainant or party aggrieved has initiated a civil action in any court based upon the same transaction or occurrence or series of transactions or occurrences which are the subject of the complaint filed or sought to be filed with the commission, unless such civil action has been voluntarily discontinued or withdrawn by the complainant;

2. The complainant or party aggrieved has filed a complaint with the New York State Division of Human Rights, or with the commission on human rights of any city, town or village located in Ulster County, based upon the same transaction or occurrence or series of transactions or occurrences which are the subject of the complaint filed or sought to be filed with the commission;

3. The complainant or party aggrieved has filed a complaint, action or proceeding with any administrative agency of the State or the County of Ulster, based upon the same transaction or occurrence or series of transactions or occurrences which are the subject of the complaint filed or sought to be filed with the commission;

4. The complainant or party aggrieved: (i) is employed by an organization, company, association, government, or other entity, which, pursuant to a written policy, maintains an affirmative action, equal employment, or similar office or department, which office or department would have jurisdiction over the subject matter of the complaint filed or sought to be filed with the commission; and (ii) the complainant or party aggrieved has not exhausted the remedies provided for in the written policy. The provisions of this subparagraph shall not apply in the event that the affirmative action, equal employment or similar office or department to which complaint was made fails to render a determination thereon within one year of the filing of the complaint with such office or department, in which event the

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complainant or party aggrieved must file a complaint with the commission within one year of the time that the complainant or party aggrieved became entitled to file such complaint with the commission. The provisions of this subparagraph shall not preclude the filing with the commission of a complaint which alleges that the organization, company, association, government or other entity involved has engaged or is engaging in a pattern of unlawful discriminatory practices which have involved identical or substantially similar acts committed against two or more persons who were similarly situated, provided that the complaint is filed within one year after the occurrence of the alleged unlawful practices.

b. Notwithstanding the provisions of paragraph a. above, the commission shall have jurisdiction to entertain a complaint:

1. Where: (i) the complainant or party aggrieved previously filed a complaint, based upon the same transaction or occurrence or series of transaction or occurrences, with a human rights or similar commission established in or for any city, town, or village located in Ulster County; (ii) such commission determined that the respondent committed an unlawful discriminatory practice; (iii) such determination has not been annulled or stayed by any court; (iv) the relief requested by the complainant or party aggrieved is limited to enforcement of such determination by requiring the respondent to cease and desist from the unlawful discriminatory practice and by requiring the respondent to comply with such other terms and conditions of the prior determination as may be enforceable by the commission; and (v) the complaint is filed with the commission within one year of the making of the determination sought to be enforced.

2. Where: (i) the complainant or party aggrieved previously filed a complaint, based upon the same transaction or occurrence or series of transaction or occurrences, with the affirmative action, equal employment or similar office maintained by his or her employer; (ii) such office determined that the respondent committed an unlawful discriminatory practice; (iii) such determination has not been annulled or stayed by any court; (iv) the relief requested by the complainant or party aggrieved is limited to enforcement of such determination by requiring the respondent to cease and desist from the unlawful discriminatory practice and by requiring the respondent to comply with such other terms and conditions of the prior determination as may be enforceable by the commission; and (v) the complaint is filed with the commission within one year of the making of the

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determination sought to be enforced.

c. The commission shall not have jurisdiction to accept any proceedings by transfer from the New York State Division of Human Rights.

**SECTION 14. JUDICIAL REVIEW AND ENFORCEMENT.**

Any complainant, respondent or other person aggrieved by an order of the commission which is an order after a hearing, a cease and desist order, an order awarding damages, an order dismissing a complaint, an order awarding costs, or by an order of the commission which makes a final disposition of a complaint may obtain judicial review thereof under Article 78 of the Civil Practice Law and Rules, and the commission may obtain an order of court for its enforcement and for the enforcement of any other order of the commission, in a proceeding as provided in this section. Such proceeding shall be brought in the New York State Supreme Court, Ulster County, or in such other County wherein any person required in the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be initiated by the filing of a notice of petition and petition in such court. Thereafter, at a time and in a manner to be specified by the court, the commission shall file with the court a written transcript of the record of all prior proceedings. Upon the filing of a notice of petition and petition, the court shall have jurisdiction of the proceeding and of the questions determined therein.

**SECTION 15. EXPENDITURE LIMITATION.**

The expenses of operation of the commission shall be subject to appropriation in the County budget, provided, however, that, effective as of the first County budget adopted following the enactment of this local law, and for the next County budget immediately thereafter, the amounts expended for the commission from funds raised by the County through taxation shall, in no event, exceed the sum of \$100,000.00 in each such budget.

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**SECTION 16. GOVERNMENTAL IMMUNITY/NO SPECIAL DUTY  
CREATED.**

This Local Law does not create any special duty by Ulster County; nor does it create any special duty by any municipality within Ulster County. Any and all liability and consequential damage resulting from either (a) a violation of any provisions of this Local Law; or (b) the enforcement of any provisions of this Local Law is hereby disclaimed and governmental immunity is retained.

**SECTION 17. SEVERABILITY.**

If any word, phrase, clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section of part thereof directly involved in the controversy in which such judgment shall have been rendered.

**SECTION 18. EFFECTIVE DATE.**

This law shall take effect 60 days following the authorization of special legislative authority from the State of New York as requested in Resolution No. 11 of 2017.