

**ASSEMBLY, No. 1972**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

INTRODUCED FEBRUARY 8, 2010

**Sponsored by:**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington and Camden)**

**SYNOPSIS**

Enhances rights and remedies of employees who disclose or refuse to participate in fraudulent employer practices.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT concerning the rights and remedies of employees who  
2 disclose or refuse to participate in certain fraudulent practices of  
3 employers, and amending P.L.1986, c.105 and P.L.1995, c.142.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 3 of P.L.1986, c.105, (C.34:19-3) is amended to read  
9 as follows:

10 3. An employer shall not take any retaliatory action against an  
11 employee because the employee does any of the following:

12 a. Discloses, or threatens to disclose to a supervisor or to a  
13 public body an activity, policy or practice of the employer, or  
14 another employer, with whom there is a business relationship, that  
15 the employee reasonably believes:

16 (1) is in violation of a law, or a rule or regulation promulgated  
17 pursuant to law, including any violation involving deception of, or  
18 misrepresentation to, any shareholder, investor, client, patient,  
19 customer, employee, former employee, retiree or pensioner of the  
20 employer or any governmental entity, or, in the case of an employee  
21 who is a licensed or certified health care professional, reasonably  
22 believes constitutes improper quality of patient care; or

23 (2) is fraudulent or criminal, including any activity, policy or  
24 practice of deception or misrepresentation which the employee  
25 reasonably believes may defraud any shareholder, investor, client,  
26 patient, customer, employee, former employee, retiree or pensioner  
27 of the employer or any governmental entity;

28 b. Provides information to, or testifies before, any public body  
29 conducting an investigation, hearing or inquiry into any violation of  
30 law, or a rule or regulation promulgated pursuant to law by the  
31 employer or another employer, with whom there is a business  
32 relationship, including any violation involving deception of, or  
33 misrepresentation to, any shareholder, investor, client, patient,  
34 customer, employee, former employee, retiree or pensioner of the  
35 employer or any governmental entity, or, in the case of an employee  
36 who is a licensed or certified health care professional, provides  
37 information to, or testifies before, any public body conducting an  
38 investigation, hearing or inquiry into the quality of patient care; or

39 c. Objects to, or refuses to participate in any activity, policy or  
40 practice which the employee reasonably believes:

41 (1) is in violation of a law, or a rule or regulation promulgated  
42 pursuant to law, including any violation involving deception of, or  
43 misrepresentation to, any shareholder, investor, client, patient,  
44 customer, employee, former employee, retiree or pensioner of the  
45 employer or any governmental entity, or, if the employee is a

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 licensed or certified health care professional, constitutes improper  
2 quality of patient care;

3 (2) is fraudulent or criminal, including any activity, policy or  
4 practice of deception or misrepresentation which the employee  
5 reasonably believes may defraud any shareholder, investor, client,  
6 patient, customer, employee, former employee, retiree or pensioner  
7 of the employer or any governmental entity; or

8 (3) is incompatible with a clear mandate of public policy  
9 concerning the public health, safety or welfare or protection of the  
10 environment.

11 (cf. P.L.2005, c.329, s.1)

12

13 2. Section 5 of P.L.1986, c.105, (C.34:19-5) is amended to read  
14 as follows:

15 5. Upon a violation of any of the provisions of this act, an  
16 aggrieved employee or former employee may, within one year,  
17 institute a civil action in a court of competent jurisdiction. Upon  
18 the application of any party, a jury trial shall be directed to try the  
19 validity of any claim under this act specified in the suit. All  
20 remedies available in common law tort actions shall be available to  
21 prevailing plaintiffs. These remedies are in addition to any legal or  
22 equitable relief provided by this act or any other statute. The court  
23 **[may]** shall also order, where appropriate and to the fullest extent  
24 possible:

25 a. An injunction to restrain any **[continued]** violation of this act  
26 which is continuing at the time that the court issues its order;

27 b. The reinstatement of the employee to the same position held  
28 before the retaliatory action, or to an equivalent position;

29 c. The reinstatement of full fringe benefits and seniority rights;

30 d. The compensation for all lost wages, benefits and other  
31 remuneration; and

32 e. The payment by the employer of reasonable costs, and  
33 attorney's fees**[:];**.

34 **[f.** Punitive damages; or

35 **g. An]** In addition, the court or jury may order: the assessment  
36 of a civil fine of not more than **[\$1,000.00]** \$10,000 for the first  
37 violation of the act and not more than **[\$5,000.00]** \$20,000 for each  
38 subsequent violation, which shall be paid to the State Treasurer for  
39 deposit in the General Fund; punitive damages; or both a civil fine  
40 and punitive damages. In determining the amount of punitive  
41 damages, the court or jury shall consider not only the amount of  
42 compensatory damages awarded to the employee, but also the  
43 amount of all damages caused to shareholders, investors, clients,  
44 patients, customers, employees, former employees, retirees or  
45 pensioners of the employer, or to the public or any governmental  
46 entity, by the activities, policies or practices of the employer which  
47 the employee disclosed, threatened to disclose, provided testimony

1 regarding, objected to, or refused to participate in.

2 (cf: P.L.2005, c.329, s.2)

3

4 3. Section 6 of P.L.1995, c.142 (C.2A:15-5.14) is amended to  
5 read as follows:

6 6. a. Before entering judgment for an award of punitive  
7 damages, the trial judge shall ascertain that the award is reasonable  
8 in its amount and justified in the circumstances of the case, in light  
9 of the purpose to punish the defendant and to deter that defendant  
10 from repeating such conduct. If necessary to satisfy the  
11 requirements of this section, the judge may reduce the amount of or  
12 eliminate the award of punitive damages.

13 b. No defendant shall be liable for punitive damages in any  
14 action in an amount in excess of five times the liability of that  
15 defendant for compensatory damages or \$350,000, whichever is  
16 greater.

17 c. The provisions of subsection b. of this section shall not apply  
18 to causes of action brought pursuant to P.L.1993, c.137 (C.2A:53A-  
19 21 et seq.), P.L.1945, c.169 (C.10:5-1 et seq.), P.L.1989, c.303  
20 (C.26:5C-5 et seq.), **[or]** P.L.1992, c.109 (C.2A:61B-1) or  
21 P.L.1986, c.105, (C.34:19-1 et seq.), or in cases in which a  
22 defendant has been convicted pursuant to R.S.39:4-50 or section 2  
23 of P.L.1981, c.512 (C.39:4-50.4a).

24 (cf: P.L.2005, c.329, s.3)

25

26 4. This act shall take effect immediately.

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#### STATEMENT

30

31 This bill enhances the scope and strengthens the enforcement  
32 provisions of the "Conscientious Employee Protection Act" (CEPA)  
33 P.L.1986, c.105 (C.34:19-1 et seq.), with special emphasis on  
34 protecting any employee who discloses to a supervisor or a public  
35 body, or refuses to participate in, any deception or  
36 misrepresentation which may defraud shareholders, investors,  
37 clients, patients, customers, employees, former employees, retirees  
38 or pensioners of the employer, or governmental entities.

39 The bill expressly includes, among the fraudulent or criminal  
40 employer actions which an employee may disclose and refuse to  
41 participate in, any activity, policy, or practice of deception or  
42 misrepresentation which the employee reasonably believes may  
43 defraud any of the employer's shareholders, investors, clients,  
44 patients, customers, employees, former employees, retirees or  
45 pensioners, or any governmental entity.

46 The bill requires, rather than permits, that the remedies ordered  
47 by a court in a civil action for a violation of the act include, to the  
48 fullest extent possible, all of the following:

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- 1       1. An injunction against any continuing violation of the act;
- 2       2. Reinstatement of the employee to the same, or comparable,
- 3       employment with full fringe benefits and seniority rights;
- 4       3. Compensation for all lost remuneration; and
- 5       4. Payment of reasonable costs and lawyers fees.

6       As is currently the case under CEPA, the court may also order  
7       civil fines and punitive damages. The bill amends that law to raise  
8       the maximum civil fine for a first violation from \$1,000 to \$10,000  
9       and for subsequent violations from \$5,000 to \$20,000, and to direct  
10      the court, when determining the amount of any punitive damages to  
11      be ordered, to consider not only the amount of compensatory  
12      damages awarded to the employee, but also the amount of damage  
13      caused by employer actions to shareholders, investors, clients,  
14      patients, customers, employees, former employees, retirees or  
15      pensioners of the employer, or to governmental entities or the  
16      public. Finally, the bill exempts punitive damages awarded under  
17      CEPA from the maximum limit set by the "Punitive Damages Act,"  
18      P.L.1995, c.142 (C.2A:15-5.9 et seq.), which is the greater of  
19      \$350,000 or five times the awarded compensatory damages.

20      This bill is intended to enhance the scope and strengthens the  
21      enforcement provisions of the CEPA, and is not intended to  
22      diminish, reduce or curtail the rights or remedies available to  
23      employees under that act in any way.