

SENATE, No. 677

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator BARBARA BUONO

District 18 (Middlesex)

SYNOPSIS

Creates a Business Court.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT establishing a Business Court and supplementing Title 2B
2 of the New Jersey Statutes.

3

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

6

7 1. The Legislature of the State of New Jersey finds and
8 declares that:

9 a. The quality and consistency of decision-making in the
10 resolution of disputes in cases involving business and commercial
11 disputes needs to be improved in order to enhance the fairness of
12 process for business and commercial litigants and to make New
13 Jersey a more attractive place for businesses to locate and expand;
14 and

15 b. Steps should be taken which will improve quality and
16 predictability in business and commercial litigation accessible to
17 litigants throughout the State of New Jersey, with due regard for
18 considerations of efficient allocation of judicial resources; and

19 c. Business Court should be created in order to afford
20 accessible and efficient access throughout the State of New Jersey
21 and with appropriate consideration of the efficient allocation of
22 judicial resources; and

23 d. The appointment of persons to sit as judges of the Business
24 Court should take into account the knowledge of the law governing
25 business and commerce and experience in business and commercial
26 matters.

27

28 2. A Business Court is hereby established as a court of limited
29 jurisdiction pursuant to Article VI, Section 1, paragraph 1 of the
30 New Jersey Constitution.

31

32 3. The Business Court shall be a court of record and shall have
33 a seal.

34

35 4. The Business Court shall have jurisdiction with respect to:

36 a. business and commercial disputes involving contracts; the
37 Uniform Commercial Code; banking; insurance; commodities;
38 securities; corporations; non-profit corporations; partnerships;
39 limited liability entities and associations; business trusts;
40 competition among businesses; business reorganizations;
41 dispositions of businesses; business combinations; shareholder,
42 partner and member disputes; intellectual property matters; the
43 termination of services to a business or an agreement not to
44 compete; employment agreements with an executive officer or
45 manager; and other commercial disputes as provided by the Rules
46 of the Supreme Court; and

47 b. private actions authorized under federal law which may be
48 heard in State court arising under federal law pursuant to which a

1 federal agency regulates securities, commodities, energy, foods,
2 drugs, telecommunication or transportation, or other mercantile
3 matters; and

4 c. business and commercial disputes where the parties to a
5 contract have agreed in writing that the Business Court shall have
6 jurisdiction; and

7 d. actions cognizable in the Superior Court which raise issues
8 as to which judicial expertise in matters involving business and
9 commerce is desirable, which are not within the jurisdiction of the
10 Chancery Division of the Superior Court, and which have been
11 transferred to the Business Court pursuant to the Rules of the
12 Supreme Court; and

13 e. any other matters as may be provided by statute; and

14 f. the exercise of any powers that may be necessary to
15 effectuate its decisions, judgments, and orders.

16 The Business Court shall not have jurisdiction over matters
17 involving primarily consumer claims. As used in this act:
18 "consumer claims" means actions concerning the leasing, licensing
19 or purchasing of real or personal property, the obtaining of credit or
20 the contracting for services for cash or on credit if the property,
21 credit, or services are obtained for personal, family, or household
22 purposes. "Consumer claims" may include actions pursuant to the
23 provisions of Title 56 of the Revised Statutes.

24

25 5. a. The Business Court, in all causes within its jurisdiction,
26 and subject to law, may grant legal and equitable relief so that all
27 matters in controversy between the parties may be completely
28 determined.

29 b. Judgments of the Business Court may be appealed to the
30 Appellate Division of the Superior Court pursuant to Rules of the
31 Supreme Court.

32

33 6. a. The filing fee for commencement of proceedings in the
34 Business Court shall be the same as proceedings in the Superior
35 Court, Law Division.

36 b. Additional fees and the reduction or waiver of fees for
37 particular classes of cases shall be established by the Rules of the
38 Supreme Court.

39 c. No proceeding shall be heard by the Business Court unless
40 the fees are paid or waived.

41 d. All fees shall be payable to the clerk of the Business Court
42 for the use of the State, and shall not be refundable except as
43 specifically provided by the Rules of the Supreme Court.

44 e. Practice and procedure in the Business Court shall be as
45 provided by the Rules of the Supreme Court.

46 f. Decisions of the Business Court shall be published in the
47 manner directed by the Supreme Court.

1 7. a. The Business Court shall maintain permanent locations in
2 Trenton and Newark and may hold sessions at other locations
3 throughout the State.

4 b. The State shall provide courtrooms, chambers, and offices
5 for the Business Court at the required permanent locations in
6 Trenton and Newark and shall arrange for courtrooms, chambers,
7 and offices or other appropriate facilities at other locations
8 throughout the State.

9
10 8. a. The Governor shall nominate and appoint, with the advice
11 and consent of the Senate, the judges of the Business Court.

12 b. All appointments to such judgeships shall be made in such
13 manner that the appointees shall be, as nearly as possible, in equal
14 members, members of different political parties so as to constitute
15 the Business Court bipartisan in character.

16 The words "political parties" mean such political parties as shall
17 have cast the largest and next to the largest number of votes,
18 respectively, for members of the General Assembly at the last
19 preceding general election held for the election of all the members
20 of the General Assembly prior to the making of any such
21 appointments.

22
23 9. a. The Business Court shall consist of no less than six, nor
24 more than 12 judges, each of whom shall exercise the powers of the
25 court, subject to the Rules of the Supreme Court.

26 b. The judges of the Business Court shall have been admitted to
27 the practice of law in the State for at least 10 years prior to
28 appointment and shall be chosen for their special qualifications,
29 knowledge, and experience in matters of business and commerce.

30
31 10. a. The judges of the Business Court shall hold their offices
32 for initial terms of seven years and until their successors are
33 appointed and qualified, and upon reappointment shall hold their
34 offices during good behavior.

35 b. The judges of the Business Court shall be retired upon
36 attaining the age of 70 years, upon the same terms and conditions as
37 judges of the Superior Court, and shall have the same pension rights
38 and other benefits as judges of the Superior Court.

39
40 11. a. Each judge of the Business Court shall receive annual
41 compensation and other benefits equal to that of a judge of the
42 Superior Court and which shall not be diminished during the term
43 of appointment.

44 b. The judges of the Business Court shall not engage in the
45 practice of law or other gainful pursuit nor shall they hold other
46 office or position of profit under this State, any other State or the
47 United States.

1 12. a. The judges of the Business Court shall be subject to
2 impeachment, and upon impeachment shall not exercise judicial
3 office until acquitted. The judges of the Business Court shall also
4 be subject to removal from office by the Supreme Court for the
5 causes and in the manner as is provided by law for the removal of
6 judges of the Superior Court.

7 b. Whenever the Supreme Court certifies to the Governor that a
8 judge of the Business Court appears to be substantially unable to
9 perform the duties of office, the Governor shall appoint a
10 commission of three persons to inquire into the circumstances.
11 Upon the recommendation of the commission, the Governor may
12 retire the judge from office, on pension, as may be provided by law.

13
14 13. The Chief Justice shall assign one of the judges of the
15 Business Court to be the presiding judge of the Business Court.
16 The presiding judge shall, subject to the supervision of the Chief
17 Justice and the Administrative Director of the Courts, be
18 responsible for the administration of the Business Court.

19
20 14. The presiding judge shall submit a report to the Chief Justice
21 of the Supreme Court annually. The report shall be published as
22 part of the Annual Report of the Administrative Director of the
23 Courts. The report shall contain information and statistics for the
24 previous fiscal year concerning the operation of the Business Court.
25 The report may also contain recommendations by the presiding
26 judge regarding the clarification or revision of legislation, rules, and
27 regulations relating to business and commerce, or the practice and
28 procedure in the Business Court.

29
30 15. The Chief Justice may assign judges of the Business Court to
31 the Superior Court or to any other court as the need appears, and
32 any judge so assigned shall exercise all of the powers of a judge of
33 that court.

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35 16. The Supreme Court shall appoint to serve at its pleasure a
36 Clerk and a Deputy Clerk of the Business Court, neither of whom
37 shall be subject to the provisions of Title 11A, Civil Service, of the
38 New Jersey Statutes.

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40 17. This act shall take effect on the 180th day after the date of
41 enactment.

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STATEMENT

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46 This bill establishes a Business Court as a court of limited
47 jurisdiction very similar to the current Tax Court. The Business
48 Court would have jurisdiction with respect to business and

1 commercial disputes involving contracts; the Uniform Commercial
2 Code; banking; insurance; commodities; securities; corporations;
3 non-profit corporations; partnerships; limited liability entities and
4 associations; business trusts; competition among businesses;
5 business reorganizations; dispositions of businesses; business
6 combinations; shareholder, partner and member disputes;
7 intellectual property matters; the termination of services to a
8 business or an agreement not to compete; employment agreements
9 with an executive officer or manager; and other commercial
10 disputes as provided by the court rules. The Business Court would
11 also hear certain private actions authorized under federal law which
12 may be heard in State court pursuant to which a federal agency
13 regulates certain matters. The bill sets forth certain other instances
14 such as business and commercial disputes where the parties to a
15 contract have agreed in writing that the Business Court shall have
16 jurisdiction.

17 The Governor would nominate and appoint, with the advice and
18 consent of the Senate, the judges of the Business Court.

19 Judges of the Business Court would hold their offices for initial
20 terms of seven years and until their successors are appointed and
21 qualified, and upon reappointment would hold their offices during
22 good behavior.

23 The judges of the Business Court would be required to retire at
24 the age of 70 years, upon the same terms and conditions as judges
25 of the Superior Court, and would have the same pension rights and
26 other benefits as judges of the Superior Court. Each judge of the
27 Business Court would receive annual compensation and other
28 benefits equal to that of a judge of the Superior Court.

29 The judges of the Business Court would be subject to
30 impeachment. The judges of the Business Court would also be
31 subject to removal from office by the Supreme Court as is provided
32 by law for the removal of judges of the Superior Court.

33 The Chief Justice would be required to assign one of the judges
34 of the Business Court to be the presiding judge of the Business
35 Court. The presiding judge would, subject to the supervision of the
36 Chief Justice and the Administrative Director of the Courts, be
37 responsible for the administration of the Business Court.