

ASSEMBLY, No. 492

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS

Protects employee rights to ownership and usage of employee inventions developed entirely on employee's own time and without using employer's resources.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning certain employee inventions and supplementing
2 P.L.1974, c.80 (C.34:1B-1 et seq.).

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

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7 1. a. (1) Any provision in an employment contract between an
8 employee and employer, which provides that the employee shall
9 assign or offer to assign any of the employee's rights to an
10 invention to that employer, shall not apply to an invention that the
11 employee develops entirely on the employee's own time, and
12 without using the employer's equipment, supplies, facilities or
13 information, including any trade secret information, except for
14 those inventions that:

15 (a) relate to the employer's business or actual or demonstrably
16 anticipated research or development; or

17 (b) result from any work performed by the employee on behalf
18 of the employer.

19 (2) To the extent any provision in an employment contract
20 applies, or intends to apply, to an employee invention subject to this
21 subsection, the provision shall be deemed against the public policy
22 of this State and shall be unenforceable.

23 b. If an employee, outside the context of an employment
24 contract, voluntarily offers to the employee's employer an
25 opportunity to acquire any of the employee's rights to an invention
26 subject to subsection a. of this section, following the development
27 of the invention, which development may include the idea or
28 concept for the actual production of the invention, the employer
29 shall have no more than nine months from the initial date of the
30 employee's offer to the employer to accept or reject the opportunity
31 to acquire any rights. After this period, the employee shall retain
32 all of the employee's rights to the invention, and the employer shall
33 be barred from any further opportunity to acquire any of the rights.

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35 2. This act shall take effect on the first day of the third month
36 next following enactment, and shall apply to any employment
37 contract entered into on or after that effective date.

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STATEMENT

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42 This bill prohibits an employment contract between an employee
43 and employer that requires the assignment by the employee of any
44 employee invention developed entirely on the employee's own time
45 and without using the employer's resources. However, this
46 prohibition shall not apply to any such invention that: (1) relates to
47 the employer's business or actual or demonstrably anticipated

1 research or development; or (2) results from any work performed by
2 the employee on behalf of the employer.

3 To the extent any provision in an employment contract applies,
4 or intends to apply, to any such employee invention falling under
5 the scope of the bill, the provision shall be deemed against the
6 public policy of this State and shall be unenforceable.

7 The bill further provides that, outside the context of an
8 employment contract, if an employee voluntarily offers to the
9 employee's employer an opportunity to acquire any of the
10 employee's rights to an invention, following the development of the
11 invention, which development may include the idea or concept for
12 the actual production of the invention, the employer shall have no
13 more than nine months from the initial date of the employee's offer
14 to the employer to accept or reject the opportunity to acquire any
15 rights. After this period, the employee shall retain all of the
16 employee's rights to the invention, and the employer shall be barred
17 from any further opportunity to acquire any of the rights.

18 The general intent of this bill is to preserve an employee's
19 common law rights to the exclusive ownership and usage of any
20 employee invention totally unrelated to the job functions of the
21 employee and created wholly without using any employer
22 resources. Under current law in New Jersey, nothing prevents an
23 employer from acquiring the rights to any such employee invention
24 through the express terms of an employment contract. This bill
25 would prevent the employer's acquisition of rights to such invention
26 through such a contract, thereby preserving the employee's rights to
27 the employee's own invention. It also intends to preserve these
28 rights by setting a limited period, of nine months, during which an
29 employer can acquire rights to such inventions when voluntarily
30 offered by the employee. Beyond this period, the employee shall
31 retain all of the employee's rights, and the employer shall be barred
32 from any further opportunity to acquire them.