

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 121

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 5, 2018

The Senate Labor Committee reports favorably, and with committee amendments, Senate Bill No. 121.

As amended by the committee, this bill would bar provisions in employment contracts that waive certain rights or remedies. It would also bar certain agreements that conceal details relating to discrimination claims.

Under the bill, a provision in any employment contract that waives any substantive or procedural right or remedy relating to a claim of discrimination, retaliation, or harassment would be deemed against public policy and unenforceable.

The bill provides that no right or remedy under the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute or case law could be prospectively waived.

The above described provisions of the bill would not apply to the terms of any collective bargaining agreement between an employer and the collective bargaining representative of the employees.

The bill, as amended, also provides that a provision in any employment contract or agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment, including claims that are submitted to arbitration, would be deemed against public policy and unenforceable against the employee, and, if the employee chooses to make disclosures which make it possible to identify the employer, unenforceable against the employer.

Under the bill, a person who enforces or attempts to enforce a provision deemed against public policy and unenforceable would be liable for the employee’s reasonable attorney fees and costs.

The bill provides that no person shall take any retaliatory action, including but not limited to failure to hire, discharge, suspension, demotion, discrimination in the terms, conditions, or privileges of employment, or other adverse action, against a person, on grounds that the person does not enter into an agreement or contract that contains a provision deemed against public policy and unenforceable pursuant to the bill.

Under the bill, any person claiming to be aggrieved by a violation of the bill may initiate suit in Superior Court. An action would be

required to be commenced within two years next after the cause of any such action shall have accrued. All remedies available in common law tort actions would be available to prevailing plaintiffs, in addition to the remedies provided by the bill. A prevailing plaintiff would be awarded reasonable attorney fees and costs.

The bill would take effect immediately and apply to all contracts and agreements entered into, renewed, modified, or amended on or after the effective date.