

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## SENATE, No. 121

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 28, 2019

The Assembly Appropriations Committee reports favorably Senate Bill No. 121 (1R), with committee amendments.

As amended, 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 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 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, would be deemed against public policy and unenforceable. The bill applies to non-disclosure agreements; makes the non-disclosure provisions unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable; and requires that every settlement agreement resolving a discrimination, retaliation, or harassment claim by an employee against an employer include a notice that although the parties may have agreed to keep the settlement and underlying facts confidential, such a provision is unenforceable against the employer if the employee publicly reveals sufficient details so that the employer is reasonably identifiable.

As amended, the bill does not prohibit an employer from requiring an employee to sign a contract in which: (1) the employee agrees not to enter into competition with the employer during or after employment; or (2) the employee agrees not to disclose proprietary

information, which includes only non-public trade secrets, business plan and customer information.

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.

As reported, this bill is identical to Assembly Bill No. 1242 (1R), as amended and reported by the committee on this date.

#### COMMITTEE AMENDMENTS:

The committee amendments clarify that the bill does not prohibit an employer from requiring an employee to sign a contract in which: (1) the employee agrees not to enter into competition with the employer during or after employment; or (2) the employee agrees not to disclose proprietary information, which includes only non-public trade secrets, business plan and customer information.

#### FISCAL IMPACT:

This bill has not been certified as requiring a fiscal note.