

SENATE, No. 345

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator BAER

1 AN ACT concerning discrimination, amending and supplementing the
2 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) a. The amendatory and supplementary provisions
8 of this act, P.L. , c. (C.) (now pending before the Legislature
9 as this bill), shall not be construed to require, permit or encourage an
10 employer to adopt hiring or promotion quotas on the basis of race,
11 color, religion, sex, marital status, age, disability, or national origin,
12 and the use of such quotas shall be deemed an unlawful employment
13 practice under this act, provided that those provisions shall not be
14 construed to affect court-ordered remedies, affirmative action, or
15 conciliation agreements otherwise in accordance with the law.

16 b. It shall be an unlawful employment practice for a respondent, in
17 connection with the selection or referral of applicants or candidates for
18 employment or promotion to adjust test scores of, or use different
19 cut-off scores for, a written employment test on the basis of the race,
20 color, religion, sex, marital status, age, disability, or national origin of
21 individual test takers, provided that this subsection shall not apply to
22 a respondent seeking to comply with a court order aimed at remedying
23 past discrimination. Nothing in this subsection shall be construed to
24 authorize the use of any test which is not in conformity with the
25 amendatory and supplementary provisions of this act, P.L. , c.
26 (C.) (now pending before the Legislature as this bill) or the
27 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

28
29 2. (New section) As used in this act:

30 a. "Act" means the "Law Against Discrimination," P.L.1945, c.169
31 (C.10:5-1 et seq.).

32 b. "Complaining party" means any person who may bring an action

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

Matter underlined thus is new matter.

1 or proceeding under this act.

2 c. "Demonstrates" means meets the burdens of production and
3 persuasion.

4 d. "Group of employment practices" means a combination of
5 employment practices or an overall employment process.

6 e. "Required by business necessity" means the practice or group of
7 practices must bear a substantial and manifest relationship to the
8 requirements for effective job performance.

9 f. "Requirements for effective job performance" may include, in
10 addition to effective performance of the actual work activities, factors
11 which bear on such performance, such as attendance, punctuality, and
12 not engaging in misconduct or insubordination.

13 g. "Respondent" means an employer, employment agency, labor
14 organization, or joint labor-management committee.

15

16 3. (New section) Notwithstanding any other provision of law to the
17 contrary, in any action alleging discrimination in employment, an
18 unlawful employment practice shall be established if a complaining
19 party demonstrates that discrimination on account of race, color,
20 religion, sex, marital status, age, disability, atypical hereditary cellular
21 or blood trait, liability for service in the Armed Forces of the United
22 States, or national origin was a contributing factor for any employment
23 practice even if that practice was also motivated by other factors.

24

25 4. (New section) a. (1) An unlawful employment practice based
26 on disparate impact is established under this section if a complaining
27 party demonstrates that a disparate impact on the basis of race, color,
28 religion, sex, marital status, age, handicap, or national origin results
29 from an employment practice or group of employment practices, and
30 the respondent fails to demonstrate that such practice or group of
31 practices is required by business necessity, except that an employment
32 practice or group of practices demonstrated to be required by business
33 necessity shall be unlawful if the complaining party demonstrates that
34 another available practice or group of practices with less disparate
35 impact, which difference is more than merely negligible, would serve
36 as well.

37 (2) If a complaining party demonstrates that a disparate impact
38 results from a group of employment practices, such party shall be
39 required after discovery to demonstrate which specific practice or
40 practices within the group results in disparate impact unless the court
41 finds that the complaining party after diligent effort cannot identify,
42 from records or other information of the respondent reasonably
43 available, through discovery or other means, which specific practice or
44 practices contributed to the disparate impact.

45 (3) If the respondent demonstrates that a specific employment
46 practice within a group of employment practices does not contribute

1 in a meaningful way to the disparate impact, the respondent shall not
2 be required to demonstrate that such practice is required by business
3 necessity.

4 b. A demonstration that an employment practice is required by
5 business necessity may be used as a defense only against a claim under
6 this section.

7 c. The mere existence of a statistical imbalance in an employer's
8 workforce on account of race, color, religion, sex, marital status, age,
9 handicap, or national origin, is not alone sufficient to establish a prima
10 facie case of disparate impact violation. The mere existence of a
11 statistical balance in an employer's workforce on account of race,
12 color, religion, sex, marital status, age, handicap, or national origin is
13 not alone sufficient to establish a defense against an allegation of
14 unlawful employment practice in a case of disparate impact.

15 d. For purposes of this section, a respondent may rely upon relative
16 qualifications or skills as determined by relative performance or degree
17 of success on a selection factor, criterion, or procedure; provided, that
18 if such reliance results in a disparate impact based on race, color,
19 religion, sex, marital status, age, handicap, or national origin, such
20 reliance must be demonstrated by the respondent to be required by
21 business necessity.

22 e. Notwithstanding any other provision of this section, a rule
23 barring the employment of an individual who currently and knowingly
24 uses or possesses an illegal drug as defined in the "New Jersey
25 Controlled Dangerous Substances Act", P.L.1970, c.226 (C.24:21-1
26 et seq.), other than the use or possession of a drug taken under the
27 supervision of a licensed health care professional, or any other use or
28 possession authorized by the "New Jersey Controlled Dangerous
29 Substances Act" or any other provision of law, shall be considered an
30 unlawful employment practice under this section only if such rule is
31 adopted or applied with an intent to discriminate because of race,
32 color, religion, sex, marital status, age, handicap, or national origin.

33 f. The limitations of coverage for small businesses set forth in Title
34 VII of the federal Civil Rights Act of 1964, 42 U.S.C. §2000e(b), shall
35 also be applied to exclude small employers who otherwise would be
36 covered under the disparate impact provisions of the "Law Against
37 Discrimination".
38

39 5. (New section) In accordance with the Attorney General's
40 responsibility pursuant to subsection g. of section 8 of P.L.1945, c.169
41 (C.10:5-8) to act on rules and regulations to carry out the provisions
42 of this act, the Attorney General shall adopt rules and regulations to
43 assure that:

44 a. Disclosures authorized by section 12 of P.L.1945, c.169
45 (C.10:5-13) shall cover all appropriate information and shall follow
46 fair, practical and reasonable procedures.

1 b. Rights under this act shall only be waived knowingly, voluntarily
2 and retrospectively.

3 c. Awards of attorney fees and expenses shall be adequate to
4 assure that complainants, regardless of economic circumstances, have
5 dependable access to competent counsel to enforce the "Law Against
6 Discrimination", P.L.1945, c.169 (C.10:5-1 et seq.).

7 d. Record keeping obligations of New Jersey employers shall be
8 summarized, explained and set forth in as integrated, simplified and
9 clear manner as possible. This subsection shall not be construed to
10 require the imposition upon employers of additional record keeping
11 obligations.

12

13 6. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read as
14 follows:

15 5. As used in this act, unless a different meaning clearly appears
16 from the context:

17 a. "Person" includes one or more individuals, partnerships,
18 associations, organizations, labor organizations, corporations, legal
19 representatives, trustees, trustees in bankruptcy, receivers, and
20 fiduciaries.

21 b. "Employment agency" includes any person undertaking to
22 procure employees or opportunities for others to work.

23 c. "Labor organization" includes any organization which exists and
24 is constituted for the purpose, in whole or in part, of collective
25 bargaining, or of dealing with employers concerning grievances, terms
26 or conditions of employment, or of other mutual aid or protection in
27 connection with employment.

28 d. "Unlawful employment practice" and "unlawful discrimination"
29 include only those unlawful practices and acts specified in section 11
30 of this act.

31 e. "Employer" includes all persons as defined in subsection a. of
32 this section unless otherwise specifically exempt under another section
33 of this act, and includes the State, any political or civil subdivision
34 thereof, and all public officers, agencies, boards or bodies.

35 f. "Employee" does not include any individual employed in the
36 domestic service of any person.

37 g. "Liability for service in the Armed Forces of the United States"
38 means subject to being ordered as an individual or member of an
39 organized unit into active service in the Armed Forces of the United
40 States by reason of membership in the National Guard, naval militia or
41 a reserve component of the Armed Forces of the United States, or
42 subject to being inducted into such armed forces through a system of
43 national selective service.

44 h. "Division" means the "Division on Civil Rights" created by this
45 act.

46 i. "Attorney General" means the Attorney General of the State of

- 1 New Jersey or his representative or designee.
- 2 j. "Commission" means the Commission on Civil Rights created by
3 this act.
- 4 k. "Director" means the Director of the Division on Civil Rights.
- 5 l. "A place of public accommodation" shall include, but not be
6 limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer
7 camp, day camp, or resort camp, whether for entertainment of
8 transient guests or accommodation of those seeking health, recreation
9 or rest; any producer, manufacturer, wholesaler, distributor, retail
10 shop, store, establishment, or concession dealing with goods or
11 services of any kind; any restaurant, eating house, or place where food
12 is sold for consumption on the premises; any place maintained for the
13 sale of ice cream, ice and fruit preparations or their derivatives, soda
14 water or confections, or where any beverages of any kind are retailed
15 for consumption on the premises; any garage, any public conveyance
16 operated on land or water, or in the air, any stations and terminals
17 thereof; any bathhouse, boardwalk, or seashore accommodation; any
18 auditorium, meeting place, or hall; any theatre, motion-picture house,
19 music hall, roof garden, skating rink, swimming pool, amusement and
20 recreation park, fair, bowling alley, gymnasium, shooting gallery,
21 billiard and pool parlor, or other place of amusement; any comfort
22 station; any dispensary, clinic or hospital; any public library; any
23 kindergarten, primary and secondary school, trade or business school,
24 high school, academy, college and university, or any educational
25 institution under the supervision of the State Board of Education, or
26 the Commissioner of Education of the State of New Jersey. Nothing
27 herein contained shall be construed to include or to apply to any
28 institution, bona fide club, or place of accommodation, which is in its
29 nature distinctly private; nor shall anything herein contained apply to
30 any educational facility operated or maintained by a bona fide religious
31 or sectarian institution, and the right of a natural parent or one in loco
32 parentis to direct the education and upbringing of a child under his
33 control is hereby affirmed; nor shall anything herein contained be
34 construed to bar any private secondary or post secondary school from
35 using in good faith criteria other than race, creed, color, national
36 origin, ancestry or affectional or sexual orientation, ancestry, in the
37 admission of students.
- 38 m. "A publicly assisted housing accommodation" shall include all
39 housing built with public funds or public assistance pursuant to
40 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
41 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184,
42 and all housing financed in whole or in part by a loan, whether or not
43 secured by a mortgage, the repayment of which is guaranteed or
44 insured by the federal government or any agency thereof.
- 45 n. The term "real property" includes real estate, lands, tenements
46 and hereditaments, corporeal and incorporeal, and leaseholds,

1 provided, however, that, except as to publicly assisted housing
2 accommodations, the provisions of this act shall not apply to the
3 rental: (1) of a single apartment or flat in a two-family dwelling, the
4 other occupancy unit of which is occupied by the owner as a residence
5 or the household of the owner's family at the time of such rental; or (2)
6 of a room or rooms to another person or persons by the owner or
7 occupant of a one-family dwelling occupied by the owner or occupant
8 as a residence or the household of the owner's or occupant's family at
9 the time of such rental. Nothing herein contained shall be construed
10 to bar any religious or denominational institution or organization, or
11 any organization operated for charitable or educational purposes,
12 which is operated, supervised or controlled by or in connection with
13 a religious organization, in the sale, lease or rental of real property,
14 from limiting admission to or giving preference to persons of the same
15 religion or denomination or from making such selection as is
16 calculated by such organization to promote the religious principles for
17 which it is established or maintained. Nor does any provision under
18 this act regarding discrimination on the basis of familial status apply
19 with respect to housing for older persons.

20 o. "Real estate broker" includes a person, firm or corporation who,
21 for a fee, commission or other valuable consideration, or by reason of
22 promise or reasonable expectation thereof, lists for sale, sells,
23 exchanges, buys or rents, or offers or attempts to negotiate a sale,
24 exchange, purchase, or rental of real estate or an interest therein, or
25 collects or offers or attempts to collect rent for the use of real estate,
26 or solicits for prospective purchasers or assists or directs in the
27 procuring of prospects or the negotiation or closing of any transaction
28 which does or is contemplated to result in the sale, exchange, leasing,
29 renting or auctioning of any real estate, or negotiates, or offers or
30 attempts or agrees to negotiate a loan secured or to be secured by
31 mortgage or other encumbrance upon or transfer of any real estate for
32 others; or any person who, for pecuniary gain or expectation of
33 pecuniary gain conducts a public or private competitive sale of lands
34 or any interest in lands. In the sale of lots, the term "real estate
35 broker" shall also include any person, partnership, association or
36 corporation employed by or on behalf of the owner or owners of lots
37 or other parcels of real estate, at a stated salary, or upon a
38 commission, or upon a salary and commission or otherwise, to sell
39 such real estate, or any parts thereof, in lots or other parcels, and who
40 shall sell or exchange, or offer or attempt or agree to negotiate the
41 sale or exchange, of any such lot or parcel of real estate.

42 p. "Real estate salesperson" includes any person who, for
43 compensation, valuable consideration or commission, or other thing of
44 value, or by reason of a promise or reasonable expectation thereof, is
45 employed by and operates under the supervision of a licensed real
46 estate broker to sell or offer to sell, buy or offer to buy or negotiate

1 the purchase, sale or exchange of real estate, or offers or attempts to
2 negotiate a loan secured or to be secured by a mortgage or other
3 encumbrance upon or transfer of real estate, or to lease or rent, or
4 offer to lease or rent any real estate for others, or to collect rents for
5 the use of real estate, or to solicit for prospective purchasers or lessees
6 of real estate, or who is employed by a licensed real estate broker to
7 sell or offer to sell lots or other parcels of real estate, at a stated
8 salary, or upon a commission, or upon a salary and commission, or
9 otherwise to sell real estate, or any parts thereof, in lots or other
10 parcels.

11 q. "Handicapped" means suffering from physical disability,
12 infirmity, malformation or disfigurement which is caused by bodily
13 injury, birth defect or illness including epilepsy, and which shall
14 include, but not be limited to, any degree of paralysis, amputation, lack
15 of physical coordination, blindness or visual impediment, deafness or
16 hearing impediment, muteness or speech impediment or physical
17 reliance on a service or guide dog, wheelchair, or other remedial
18 appliance or device, or from any mental, psychological or
19 developmental disability resulting from anatomical, psychological,
20 physiological or neurological conditions which prevents the normal
21 exercise of any bodily or mental functions or is demonstrable,
22 medically or psychologically, by accepted clinical or laboratory
23 diagnostic techniques.

24 r. "Blind person" means any individual whose central visual acuity
25 does not exceed 20/200 in the better eye with correcting lens or whose
26 visual acuity is better than 20/200 if accompanied by a limit to the field
27 of vision in the better eye to such a degree that its widest diameter
28 subtends an angle of no greater than 20 degrees.

29 s. "Guide dog" means a dog used to assist deaf persons or which
30 is fitted with a special harness so as to be suitable as an aid to the
31 mobility of a blind person, and is used by a blind person who has
32 satisfactorily completed a specific course of training in the use of such
33 a dog, and has been trained by an organization generally recognized by
34 agencies involved in the rehabilitation of the blind or deaf as reputable
35 and competent to provide dogs with training of this type.

36 t. "Guide or service dog trainer" means any person who is
37 employed by an organization generally recognized by agencies
38 involved in the rehabilitation of the blind, handicapped or deaf as
39 reputable and competent to provide dogs with training, and who is
40 actually involved in the training process.

41 u. "Housing accommodation" means any publicly assisted housing
42 accommodation or any real property, or portion thereof, which is used
43 or occupied, or is intended, arranged, or designed to be used or
44 occupied, as the home, residence or sleeping place of one or more
45 persons, but shall not include any single family residence the occupants
46 of which rent, lease, or furnish for compensation not more than one

- 1 room therein.
- 2 v. "Public facility" means any place of public accommodation and
3 any street, highway, sidewalk, walkway, public building, and any other
4 place or structure to which the general public is regularly, normally or
5 customarily permitted or invited.
- 6 w. "Deaf person" means any person whose hearing is so severely
7 impaired that the person is unable to hear and understand normal
8 conversational speech through the unaided ear alone, and who must
9 depend primarily on supportive device or visual communication such
10 as writing, lip reading, sign language, and gestures.
- 11 x. "Atypical hereditary cellular or blood trait" means sickle cell
12 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
13 fibrosis trait.
- 14 y. "Sickle cell trait" means the condition wherein the major natural
15 hemoglobin components present in the blood of the individual are
16 hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as
17 defined by standard chemical and physical analytic techniques,
18 including electrophoresis; and the proportion of hemoglobin A is
19 greater than the proportion of hemoglobin S or one natural parent of
20 the individual is shown to have only normal hemoglobin components
21 (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal
22 proportions by standard chemical and physical analytic tests.
- 23 z. "Hemoglobin C trait" means the condition wherein the major
24 natural hemoglobin components present in the blood of the individual
25 are hemoglobin A (normal) and hemoglobin C as defined by standard
26 chemical and physical analytic techniques, including electrophoresis;
27 and the proportion of hemoglobin A is greater than the proportion of
28 hemoglobin C or one natural parent of the individual is shown to have
29 only normal hemoglobin components (hemoglobin A, hemoglobin A2,
30 hemoglobin F) in normal proportions by standard chemical and
31 physical analytic tests.
- 32 aa. "Thalassemia trait" means the presence of the thalassemia gene
33 which in combination with another similar gene results in the chronic
34 hereditary disease Cooley's anemia.
- 35 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
36 which in combination with another similar gene results in the chronic
37 hereditary disease Tay-Sachs.
- 38 cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis
39 gene which in combination with another similar gene results in the
40 chronic hereditary disease cystic fibrosis.
- 41 dd. "Service dog" means any dog individually trained to a
42 handicapped person's requirements including, but not limited to
43 minimal protection work, rescue work, pulling a wheelchair or
44 retrieving dropped items.
- 45 ee. "Qualified Medicaid applicant" means an individual who is a
46 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

1 ff. "Affectional or sexual orientation" means male or female
2 heterosexuality, homosexuality or bisexuality by inclination, practice,
3 identity or expression, having a history thereof or being perceived,
4 presumed or identified by others as having such an orientation.

5 gg. "Hetrosexuality" means affectional, emotional or physical
6 attraction or behavior which is primarily directed towards persons of
7 the other gender.

8 hh. "Homosexuality" means affectional, emotional or physical
9 attraction or behavior which is primarily directed towards persons of
10 the same gender.

11 ii. "Bisexuality" means affectional, emotional or physical attraction
12 or behavior which is directed towards persons of either gender.

13 jj. "Familial status" means being the natural parent of a child, the
14 adoptive parent of a child, the foster parent of a child, having a "parent
15 and child relationship" with a child as defined by State law, or having
16 sole or joint legal or physical custody, care, guardianship, or visitation
17 with a child, or any person who is pregnant or is in the process of
18 securing legal custody of any individual who has not attained the age
19 of 18 years.

20 kk. "Housing for older persons" means housing:

21 (1) provided under any State or federal program that the Attorney
22 General determines is specifically designed and operated to assist
23 elderly persons (as defined in the State or federal program); or

24 (2) intended for, and solely occupied by persons 62 years of age or
25 older; or

26 (3) intended and operated for occupancy by at least one person 55
27 years of age or older per unit. In determining whether housing
28 qualifies as housing for older persons under this subsection, the
29 Attorney General shall adopt regulations which require at least the
30 following factors:

31 (a) the existence of significant facilities and services specifically
32 designed to meet the physical or social needs of older persons, or if the
33 provision of such facilities and services is not practicable, that such
34 housing is necessary to provide important housing opportunities for
35 older persons; and

36 (b) that at least 80 percent of the units are occupied by at least one
37 person 55 years of age or older per unit; and

38 (c) the publication of, and adherence to, policies and procedures
39 which demonstrate an intent by the owner or manager to provide
40 housing for persons 55 years of age or older.

41 Housing shall not fail to meet the requirements for housing for
42 older persons by reason of: persons residing in such housing as of
43 March 12, 1989 not meeting the age requirements of this subsection,
44 provided that new occupants of such housing meet the age
45 requirements of this subsection; or unoccupied units, provided that
46 such units are reserved for occupancy by persons who meet the age

1 requirements of this subsection.

2 ll. "Discrimination because of sex" includes sexual harassment and
3 discrimination because of pregnancy, childbirth, or related medical
4 conditions.

5 mm. "Sexual harassment" means unwelcome sexual advances,
6 requests for sexual favors, and other verbal or physical conduct or
7 communication of a sexual nature when:

8 (1) Submission to the conduct or communication is made a term or
9 condition either explicitly or implicitly to obtain employment, public
10 accommodations or public services, education, or housing; or

11 (2) Submission to or rejection of the conduct or communication by
12 an individual is used as a factor in decisions affecting the individual's
13 employment, public accommodations or public services, education, or
14 housing; or

15 (3) The conduct or communication has the purpose or effect of
16 unreasonably interfering with an individual's employment, public
17 accommodations or public services, education, or housing environment.

18 (cf: P.L.1992, c.146, s.4)

19

20 7. Section 12 of P.L.1945, c.169 (C.10:5-13) is amended to read
21 as follows:

22 12. Any person claiming to be aggrieved by an unlawful
23 employment practice or an unlawful discrimination may, personally or
24 by an attorney-at-law, make, sign and file with the division a verified
25 complaint in writing which shall state the name and address of the
26 person, employer, labor organization, employment agency, owner,
27 lessee, proprietor, manager, superintendent, or agent alleged to have
28 committed the unlawful employment practice or unlawful
29 discrimination complained of and which shall set forth the particulars
30 thereof and shall contain such other information as may be required by
31 the division. Upon receipt of the complaint, the division shall notify
32 the complainant on a form promulgated by the director of the division
33 and approved by the Attorney General of the complainant's rights
34 under this act, including the right to file a complaint in the Superior
35 Court to be heard before a jury; of the jurisdictional limitations of the
36 division; and any other provisions of this act, without interpretation,
37 that may apply to the complaint. The Commissioner of Labor, the
38 Attorney General, or the Commissioner of Education may, in like
39 manner, make, sign and file such complaint. Any employer whose
40 employees, or some of them, refuse or threaten to refuse to co-operate
41 with the provisions of this act, may file with the division a verified
42 complaint asking for assistance by conciliation or other remedial
43 action.

44 Any complainant may pursuant to N.J.S.2A:14-1 initiate suit in
45 Superior Court under this act without first filing a complaint with the
46 division or any municipal office. Upon the application of any party, a

1 jury trial shall be directed to try the validity of any claim under this act
2 specified in the suit. All remedies available in common law tort actions
3 shall be available to prevailing plaintiffs. These remedies are in
4 addition to any provided by this act or any other statute. A
5 complaining party who proves discrimination shall be entitled to a
6 presumption of full relief necessary to correct the natural
7 consequences of that discrimination, unless the respondent
8 demonstrates with clear and convincing evidence that the
9 consequences would not have resulted, even if the respondent had not
10 discriminated. Prosecution of such suit in Superior Court under this
11 act shall bar the filing of a complaint with the division or any municipal
12 office during the pendency of any such suit.

13 At any time after 180 days from the filing of a complaint with the
14 division, a complainant may file a request with the division to present
15 the action personally or through counsel to the Office of
16 Administrative Law. Upon such request, the director of the division
17 shall file the action with the Office of Administrative Law, provided
18 that no action may be filed with the Office of Administrative Law
19 where the director of the division has found that no probable cause
20 exists to credit the allegations of the complaint or has otherwise
21 dismissed the complaint.

22 A party to an action based upon a violation of this act shall mail a
23 copy of the initial pleadings or claims, amended pleadings or claims,
24 counterclaims, briefs, and legal memoranda to the division at the same
25 time as filing such documents with the Office of Administrative Law
26 or the court. Upon application to the Office of Administrative Law or
27 to the court wherein the matter is pending, the division shall be
28 permitted to intervene.

29 An employee who files a complaint of discrimination with the
30 division shall, within 30 days of his written notice to the employer, be
31 entitled to a copy of all personnel policies relevant to his complaint;
32 his complete personnel file, including evaluations and salary records;
33 a complete written statement of reasons for the action which is the
34 subject of the complaint; and any other documents relevant to the
35 complaint.

36 (cf: P.L.1990, c.12, s.2)

37

38 8. (New section) An individual may not prospectively waive any
39 substantive, procedural, or remedial right under the "Law Against
40 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.). An individual
41 may waive claims under this act based on past events provided the
42 waiver is knowing and voluntary. No waiver agreement shall affect
43 the power and responsibility of the division to enforce the provisions
44 of this act.

45

46 9. Section 17 of P.L.1945, c.169 (C.10:5-18) is amended to read

1 as follows:

2 17. The Attorney General shall establish rules of practice to
3 govern, expedite and effectuate the foregoing procedure and his own
4 actions thereunder. Any complaint filed in the division or in any
5 municipal office pursuant to this act must be so filed within [180 days]
6 two years after the alleged act of discrimination or after that act
7 adversely affected the complainant, whichever was later.

8 (cf: P.L.1979, c.404, s.4)

9

10 10. Section 26 of P.L.1945, c.169 (C.10:5-27) is amended to read
11 as follows:

12 26. The provisions of this act shall be construed fairly and justly
13 with due regard to the interests of all parties. Nothing contained in
14 this act shall be deemed to repeal any of the provisions of the Civil
15 Rights Law or of any other law of this State relating to discrimination
16 because of race, creed, color, national origin, ancestry, marital status,
17 affectional or sexual orientation or sex or liability for service in the
18 Armed Forces of the United States; except that, as to practices and
19 acts declared unlawful by section 11 of this act, the procedure herein
20 provided shall, while pending, be exclusive[; and the final
21 determination therein shall exclude any other action, civil or criminal,
22 based on the same grievance of the individual concerned]. Nothing
23 herein contained shall bar, exclude, or otherwise affect any right or
24 action, civil or criminal, which may exist independently of any right to
25 redress against or specific relief from any unlawful employment
26 practice or unlawful discrimination. With respect only to affectional
27 or sexual orientation, nothing contained herein shall be construed to
28 require the imposition of affirmative action, plans or quotas as specific
29 relief from an unlawful employment practice or unlawful
30 discrimination. At the same time that, under section 13 of P.L.1945,
31 c.169 (C.10:5-14), a complainant is given notice of a finding as to
32 whether or not there exists probable cause for crediting the allegations
33 of the complaint, the Division on Civil Rights shall notify the
34 complainant of the right of that complainant to initiate suit in the
35 Superior Court pursuant to section 12 of P.L.1945, c.169 (C.10:5-13).

36 (cf: P.L.1991, c.519, s.9)

37

38 11. Section 6 of P.L.1979, c.404 (C.10:5-27.1) is amended to read
39 as follows:

40 6. In any action or proceeding brought under this act or under the
41 provisions of the Constitution of this State guaranteeing civil rights,
42 the court or administrative trier of fact shall award the prevailing party
43 [may be awarded] a reasonable attorney's fee, including expert fees
44 and other litigation expenses, as part of the cost, provided however,
45 that no attorney's fee shall be awarded to the respondent unless there

1 is a determination that the charge was [brought in bad faith] frivolous.
2 (cf: P.L.1979, c.404, s.6)

3

4 12. N.J.S.2A:14-1 is amended to read as follows:

5 2A:14-1. Every action at law for trespass to real property, for any
6 tortious injury to real or personal property, for taking, detaining, or
7 converting personal property, for replevin of goods or chattels, for any
8 tortious injury to the rights of another, including, but not limited to,
9 claims for violations of the New Jersey Constitution, not stated in
10 [sections] N.J.S.2A:14-2 and 2A:14-3 [of this Title], or for recovery
11 upon a contractual claim or liability, express or implied, not under
12 seal, or upon an account other than one which concerns the trade or
13 merchandise between merchant and merchant, their factors, agents and
14 servants, shall be commenced within [6] six years next after the cause
15 of any such action shall have accrued.

16 This section shall not apply to any action for breach of any contract
17 for sale governed by [section] N.J.S.12A:2-725 [of the New Jersey
18 Statutes].

19 (cf: P.L.1961, c.121, s.1)

20

21 13. (New section) In any action upon a complaint alleging an
22 unlawful employment practice under the provisions of P.L.1945, c.169
23 (C.10:5-1 et seq.), where the complaining party demonstrates that an
24 employer has failed to produce (1) records required by federal or State
25 law except section 12 of P.L.1945, c.169 (C.10:5-13), and those
26 records are probative of the issues at trial, or (2) the statement of
27 reasons for the employment decision required by section 12 of
28 P.L.1945, c.169 (C.10:5-13), an adverse inference shall be drawn from
29 that failure of production and in addition, where justified, the court
30 may refuse to allow additional evidence to be introduced by the
31 employer on those issues. Evidence concerning a respondent's
32 affirmative action efforts, if any, or its equal employment posture shall
33 be admissible in evidence and no privilege shall attach to such
34 evidence.

35

36 14. (New section) The amendatory and supplementary provisions
37 of this act, P.L. , c. (C.) (now pending before the
38 Legislature as this bill) shall be liberally construed to carry out the
39 remedial purposes of this act, and shall not be construed to limit in any
40 way the relief available to carry out those remedial purposes, with
41 respect to discrimination in matters other than employment, of other
42 provisions of P.L.1945, c.169 (C.10:5-1 et seq.).

43

44 15. (New section) a. Notwithstanding any other provision of law,
45 and except as provided in subsection b. of this section, an employment
46 practice that implements a litigated or consent judgment or order

1 resolving a claim of employment discrimination under the act may not
2 be challenged in a subsequent claim under the act:

3 (1) By a person who, prior to the entry of such judgment or order,
4 had notice, from any source, consistent with the requirements of due
5 process, of the proposed judgment or order sufficient to apprise him
6 that such judgment or order might affect him; and a reasonable
7 opportunity to present objections to such judgment or order; or

8 (2) By a person with respect to whom the requirements of
9 paragraph a. are not satisfied, if the court determines that the interests
10 of such persons were adequately represented by another person who
11 challenged such judgment or order prior to or after the entry of such
12 judgment or order; or

13 (3) If the court which entered the judgment or order determines
14 that reasonable efforts were made to provide notice to interested
15 persons.

16 b. Nothing in this section shall be construed to:

17 (1) Alter the standards for intervention under Rule 4:33 of the
18 Rules Governing the Courts of New Jersey;

19 (2) Apply to the rights of parties to the action in which the litigated
20 or consent judgment or order was entered, or members of a class
21 represented or sought to be represented in such action, or of members
22 of a group on whose behalf relief was sought in such action; or

23 (3) Prevent challenges to a litigated or consent judgment or order
24 on the ground that such judgment or order was obtained through
25 collusion or fraud, or is transparently invalid or was entered by a court
26 lacking subject matter jurisdiction.

27 c. Any action, not precluded under subsection a. of this section,
28 which challenges an employment practice that implements a litigated
29 or consent judgment or order resolving a claim of employment
30 discrimination under the act shall be brought, if possible, before the
31 judge that entered such judgment or order.

32
33 16. (New section) Where a seniority system or seniority practice
34 is part of a collective bargaining agreement and that system or practice
35 was included in the agreement with the intent to discriminate on the
36 basis of race, color, religion, sex, or national origin, the application of
37 that system or practice during the period that such collective
38 bargaining agreement is in effect shall be an unlawful employment
39 practice.

40
41 17. (New section) a. A court shall not enter a consent order or
42 judgment settling a claim alleging discrimination in employment unless
43 the parties and their counsel attest that a waiver of all or substantially
44 all attorneys' fees was not compelled as a condition of the settlement.

45 b. In any action or proceeding in which any judgment or order
46 granting relief under this act is challenged, the court, in its discretion

1 and in order to promote fairness, may allow the prevailing party in the
2 original action to recover from either an unsuccessful party challenging
3 such relief or a party against whom relief was granted in the original
4 action or from more than one such party under an equitable allocation
5 determined by the court, a reasonable attorney's fee including expert
6 fees and other litigation expenses and costs reasonably incurred in
7 defending, as a party, intervenor or otherwise, such judgment or order.
8 In determining whether to allow recovery of fees from the party
9 challenging the initial judgment or order, the court should consider not
10 only whether such challenge was unsuccessful, but also whether the
11 award of fees against the challenging party promotes fairness, taking
12 into consideration such factors as the reasonableness of the challenging
13 party's legal and factual position and whether other special
14 circumstances make an award unjust.

15

16 18. This act shall take effect immediately and shall apply to all
17 pending cases.

18

19

20

STATEMENT

21

22 This bill would amend and supplement New Jersey's "Law Against
23 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), to clarify certain
24 issues involved in cases alleging discrimination in employment. This
25 bill is modeled on legislation which was introduced in 1991 in
26 Congress seeking to modify certain U.S. Supreme Court rulings in
27 employment discrimination cases to ensure that the rights of those
28 adversely affected by discriminatory employment practices are
29 adequately protected.

30 The relevant provisions of the bill are as follows:

31 1. The bill would prohibit or effectively deter employers' use of
32 quotas in the hiring and promotion of employees.

33 2. The bill would provide that an unlawful employment practice
34 could be established by a complainant who demonstrates that
35 discrimination on account of race, color, religion, sex, marital status,
36 etc. was a contributing factor for an employment practice, even if the
37 practice was motivated by other factors as well.

38 3. The bill would provide that an unlawful employment practice
39 based upon disparate impact would be established by a complainant
40 who demonstrates that the practice or a group of employment
41 practices results in a disparate impact on the basis of race, color,
42 religion, sex, marital status, etc. and the respondent fails to
43 demonstrate that the practice is required by business necessity.

44 4. The bill would provide that where a seniority system or practice
45 is part of a collective bargaining agreement and was included in such
46 agreement with the intent to discriminate, the application of such

1 system or practice is to be an unlawful employment practice.

2 5. The bill would provide that all actions brought under the "Law
3 Against Discrimination", on the basis of "sex" is to include sexual
4 harassment and discrimination because of pregnancy, childbirth, or
5 related medical conditions

6 6. The bill would also strengthen several procedural provisions
7 under the "Law Against Discrimination."

8 7. The bill would provide that the awarding of attorney's fees to
9 the prevailing party in an action under the "Law Against
10 Discrimination", currently optional, is made mandatory. The bill
11 extends the scope of the provision to actions under the civil rights
12 provisions of the State Constitution (Art. I, par. 5) and provides that
13 attorney's fees are to include expert fees and other litigation expenses.

14 8. The bill would prohibit a court from entering a consent order or
15 judgment settling an employment discrimination claim unless the
16 parties and their counsel attest that no waiver of all or substantially all
17 attorneys' fees was compelled as a condition of the settlement. It
18 would also provide that a prevailing party in an original action
19 resulting in a judgment or order granting relief may be awarded
20 reasonable attorney's fees, including experts' and other expenses of
21 litigation, and costs incurred in the course of defending the judgment
22 or order

23

24

25

26

27 _____
28 Strengthens the "Law Against Discrimination" in cases involving
discrimination.