

SENATE, No. 1434

STATE OF NEW JERSEY

INTRODUCED JULY 25, 1996

By Senator RICE

1 AN ACT protecting certain employees who engage in certain political
2 activities from retaliatory action by employers.

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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. As used in this act:

8 "Candidate" means an individual seeking election to a public office
9 of the federal or State government, or of a county, municipality or
10 school district, or to an office of a political party.

11 "Employer" means an individual, partnership, association,
12 corporation or any person or group of persons acting directly or
13 indirectly on behalf of or in the interest of an employer with the
14 employer's consent and shall include all branches of State Government,
15 or the several counties and municipalities thereof, or any other
16 political subdivision of the State, or a school district, or any special
17 district, or any authority, commission, or board or any other agency or
18 instrumentality thereof.

19 "Employee" means any individual who performs services for and
20 under the control and direction of an employer for wages or other
21 remuneration.

22 "Retaliatory action" means the discharge, suspension or demotion
23 of an employee, or other adverse employment action taken against an
24 employee in the terms and conditions of employment.

25 "Supervisor" means an individual within an employer's organization
26 who has the authority to direct and control the work performance of
27 the affected employee and who has been designated by the employer
28 on the notice required under section 6 of this act.

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30 2. An employer shall not take any retaliatory action against an
31 employee because the employee runs for, or campaigns as a candidate
32 for public office, or engages in political activities for a candidate or
33 political organization during non-work hours, except that the
34 provisions of this section shall not apply to employees subject to the
35 provisions of section 1 of P.L.1964, c.168 (C.2A:158-21), and section
36 7 of P.L.1991, c.393 (C.18A:12-27), or any other employment where
37 running or campaigning as candidate for public office or engaging in

1 political activity is expressly prohibited by law.

2 3. The protection against retaliatory action provided by this act
3 shall not apply to an employee unless the employee has brought the
4 retaliatory action to the attention of a supervisor of the employee by
5 written notice and has afforded the employer a reasonable opportunity
6 to correct or stop or reverse the retaliatory action. Disclosure shall
7 not be required where the employee is reasonably certain that the
8 retaliatory action is known to one or more supervisors of the employer
9 or where the employee reasonably fears physical harm as a result of
10 the disclosure provided, however, that the situation is emergency in
11 nature.

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13 4. Upon a violation of any of the provisions of this act, an
14 aggrieved employee or former employee may, within one year,
15 institute a civil action in a court of competent jurisdiction. Upon the
16 application of any party, a jury trial shall be directed to try the validity
17 of any claim under this act specified in the suit. All remedies available
18 in common law tort actions shall be available to prevailing plaintiffs.
19 These remedies are in addition to any legal or equitable relief provided
20 by this act or any other statute. The court may also order:

- 21 a. An injunction to restrain continued violation of this act;
22 b. The reinstatement of the employee to the same position held
23 before the retaliatory action, or to an equivalent position;
24 c. The reinstatement of full fringe benefits and seniority rights;
25 d. Compensation for lost wages, benefits and other remuneration;
26 e. The payment by the employer of reasonable costs, and attorney's
27 fees;
28 f. Punitive damages; or
29 g. An assessment of a civil fine of not more than \$1,000 for the
30 first violation of the act and not more than \$5,000 for each subsequent
31 violation, which shall be paid to the State Treasurer for deposit in the
32 General Fund.

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34 5. A court, upon notice of motion in accordance with the Rules
35 Governing the Courts of the State of New Jersey, may also order that
36 reasonable attorneys' fees and court costs be awarded to an employer
37 if the court determines that an action brought by an employee under
38 this act was without basis in law or in fact. However, an employee
39 shall not be assessed attorneys' fees under this section if, after
40 exercising reasonable and diligent efforts after filing a suit, the
41 employee files a voluntary dismissal concerning the employer, within
42 a reasonable time after determining that the employer would not be
43 found to be liable for damages.

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45 6. An employer shall conspicuously display notices of its
46 employees' protections and obligations under this act, and use other
47 appropriate means to keep its employees so informed. Each notice

1 posted pursuant to this section shall include the name of the person or
2 persons the employer has designated to receive written notifications
3 pursuant to section 3 of this act.

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5 7. Nothing in this act shall be deemed to diminish the rights,
6 privileges, or remedies of any employee under any other federal or
7 State law or regulation or under any collective bargaining agreement
8 or employment contract.

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10 8. This act shall take effect immediately.

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13 STATEMENT
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15 This bill would give an employee who is politically active during
16 non-work hours the right to sue their employer if the employee
17 believes that he or she has been demoted, discharged or suffered
18 adverse employment action in the terms of the employment as a direct
19 result of such political activity. An employee would have to give
20 written notice and an opportunity to cure the problem to the employer
21 prior to instituting a court action. If the employee is reasonably
22 certain that the employer is aware of the retaliatory action, or if the
23 employee fears physical harm as a result of disclosure, the notification
24 requirement is waived. Such a lawsuit would have to be filed within
25 one year from the violation. The bill would allow the court to
26 reinstate the employee to the employee's former job or an equivalent
27 position with full fringe benefits, seniority rights, lost wages, and other
28 remuneration, as well as reasonable costs and attorney's fees and
29 punitive damages. The employer would also be subject to a fine of not
30 more than \$1,000 for the first violation and not more than \$5,000 for
31 each subsequent violation. If the court determines that an action
32 brought by the employee was without a basis in law or fact, the
33 employer can be awarded attorney's fees and costs, unless the
34 employee files a voluntary dismissal of the case within a reasonable
35 time.

36 The bill would also require employers to post notices informing
37 employees of their rights under the bill.

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42 Protects certain politically active employees from retaliatory action by
43 employers.