

SENATE, No. 1313

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator M. TERESA RUIZ

District 29 (Essex and Hudson)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblyman STERLEY S. STANLEY

District 18 (Middlesex)

Assemblyman DONALD A. GUARDIAN

District 2 (Atlantic)

Co-Sponsored by:

Assemblywomen McCoy, Peterpaul, Quijano, Reynolds-Jackson and Hall

SYNOPSIS

Establishes certification program for businesses owned by LGBTQ+ persons.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee with technical review.



(Sponsorship Updated As Of: 3/18/2024)

1 **AN ACT** establishing a certification program for businesses owned
2 by LGBTQ+ persons, and supplementing Title 52 of the Revised
3 Statutes.

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

7
8 1. As used in this act:

9 “Appeal” means a filed written challenge to a denial or
10 revocation of a certification as an LGBTQ+ business.

11 “Applicant” means a business that applies for certification as an
12 LGBTQ+ business pursuant to this act.

13 “Business” means an entity organized for profit which includes,
14 but is not limited to, a sole proprietorship, partnership, limited
15 liability company, corporation, or joint venture.

16 “Certification” means a determination by the division that an
17 applicant has met the standards for certification as an LGBTQ+
18 business, pursuant to section 2 of this act.

19 “Control and managerial and operational control” mean
20 authority over the affairs of a business, including, but not limited to,
21 capital investment, property acquisition, employee hiring, contract
22 negotiations, legal matters, officer and director selection, operating
23 responsibility, financial transaction, and the rights of other
24 shareholders or joint partners. Control shall not include absentee
25 ownership. Control shall be deemed not to exist where an owner
26 does not identify as LGBTQ+. Additionally, control shall not be
27 deemed to exist if someone, other than someone who identifies as
28 LGBTQ+, is disproportionately responsible for the daily operation
29 of a business, or for policy and contractual decisions.

30 “Day” or “business day” means any weekday, excluding
31 Saturdays, Sundays, State or federal legal holidays, and State-
32 mandated furlough days.

33 “Denial” means an administrative decision by the division to
34 reject an application pursuant to section 7 of this act.

35 “Department” means the Department of the Treasury.

36 “Designated hearing officer” means a Department of the
37 Treasury employee designated by the State Treasurer to render
38 decisions on cases involving an appeal of a denial of a certification
39 or a challenge to a certification, pursuant to this act.

40 “Director” means the director of the Division of Revenue and
41 Enterprise Services, in the Department of the Treasury.

42 “Division” means the Division of Revenue and Enterprise
43 Services, in the Department of the Treasury.

44 “E.O. 295” means Executive Order No. 295 (2022), issued by
45 Governor Murphy on May 3, 2022.

46 “Filed” means received by the director or a division
47 representative.

1 “Joint venture” means a business undertaking between two or
2 more entities who share risk and responsibility for a specific project
3 while otherwise retaining their distinct identities.

4 “LGBTQ+” means lesbian, gay, bisexual, transgender, queer,
5 questioning +, or other gender identities and sexual orientations that
6 are non-cisgender and non-heterosexual.

7 “LGBTQ+ business” means a business, which is:

8 (1) a sole proprietorship, owned and controlled by a person who
9 identifies as LGBTQ+;

10 (2) a partnership or joint venture, in which at least 51 percent of
11 the ownership interest is held by individuals who identify as
12 LGBTQ+ and the management and daily business operations are
13 controlled by one or more of the individuals who identify as
14 LGBTQ+; or

15 (3) a corporation or other entity, whose management and daily
16 business operations are controlled by one or more individuals who
17 identify as LGBTQ+ which is at least 51 percent owned by one or
18 more individuals who identify as LGBTQ+ or, if stock is issued, at
19 least 51 percent of the stock is owned by one or more individuals
20 who identify as LGBTQ+.

21 “Selective Assistance Vendor Information (SAVI)” means the
22 database in which the division maintains a public listing of small
23 businesses, veteran’s businesses, disabled veteran-owned
24 businesses, minority, women, and LGBTQ+ businesses.

25 “State contracting agency” or “contracting agency” means any
26 board, commission, committee, authority, division, college,
27 university, department, or agency of the State that possesses the
28 legal authority to enter into, or award, contracts for goods and
29 services or construction contracts.

30

31 2. a. A business may be eligible to be certified as an LGBTQ+
32 business, as set forth in this section.

33 b. In order to be eligible as an LGBTQ+ business, a business
34 shall be a sole proprietorship, partnership, joint venture,
35 corporation, or other business entity authorized pursuant to the laws
36 of the United States, which is at least 51 percent owned, operated,
37 and controlled by persons who identify as LGBTQ+.

38 c. In order to be eligible to be certified, a business shall meet
39 the following standards to be certified as an LGBTQ+ business:

40 (1) ownership. A business shall be deemed to be independently
41 owned, operated, and controlled, if its management, as specified in
42 its certification application, is responsible for both its daily and
43 long-term operation, and that management owns at least 51 percent
44 interest in the business and consists of individuals who identify as
45 LGBTQ+. The ownership and control by members of the LGBTQ+
46 community shall be real, substantial, and continuing, demonstrating
47 authority over the affairs of the business, and shall go beyond the

1 pro forma ownership of the business as reflected in its ownership
2 documents;

3 (2) business entity. Recognition of the business as a separate
4 entity for tax or corporate purposes is not necessarily sufficient for
5 recognition as an LGBTQ+ business. In determining whether a
6 potential LGBTQ+ business is an independent business, all relevant
7 factors shall be considered, including the date the business was
8 established and the degree to which financial, equipment leasing,
9 and other relationships with non-LGBTQ+ businesses vary from
10 industry practice;

11 (3) licensing. When a professional or occupational license or
12 certification is required by federal or State law to perform the
13 primary business operations of the applicant business, and the
14 LGBTQ+ business does not possess the applicable license or
15 certification, the LGBTQ+ owner shall demonstrate competence in
16 the affairs of the business, in order to satisfy the requirement for
17 managerial and operational control; and

18 (4) registration. A business shall be registered with the division
19 to do business in New Jersey.
20

21 3. a. The documentation required for first-time applicants
22 seeking certification may be abbreviated. The documentation
23 requirements in this section shall only apply to first-time applicants
24 for certification.

25 b. A first-time applicant for certification as an LGBTQ+
26 business shall submit documentation necessary to determine the
27 applicant's eligibility for certification.

28 c. The division shall prepare a New Jersey Uniform
29 Certification Application. The application shall be an online
30 application available from the division's Internet website. The
31 information submitted in support of an application shall include, but
32 not be limited to:

33 (1) the names and addresses of the owner, partners, or
34 shareholders, as applicable, and their representative shares of
35 ownership;

36 (2) the names and addresses of members of the board of
37 directors;

38 (3) the names and addresses of the officers of the business;

39 (4) the number of shares of stock issued and outstanding, in the
40 case of a corporation;

41 (5) the articles of incorporation, bylaws, partnership agreements,
42 or joint venture agreements, as applicable;

43 (6) organizational charts;

44 (7) the certificate of birth, or motor vehicle driver's license,
45 passport, or other acceptable form of identification of the owners,
46 partners, shareholders, or in the case of corporations, members of
47 the board of directors, as applicable to the applicant entity; and

1 (8) an affidavit, signed by the individual seeking certification,
2 certifying that the signer owns the business and identifies as
3 LGBTQ+. In the case of a business with multiple owners, a single
4 affidavit certifying that at least 51 percent of ownership identifies
5 as LGBTQ+ shall be sufficient.

6 d. A first-time applicant's certification shall be provisional and
7 shall be operative for one year from the date of approval.
8 Following an initial certification year, a business shall reapply for
9 certification no later than 20 days prior to the expiration of the
10 business's current certification, and not earlier than 60 days prior to
11 the expiration of that certification.

12 (1) The division shall prepare an application form for
13 recertification. The application shall be an online application
14 available on the division's Internet website.

15 (2) As part of its recertification application to the division, a
16 business shall provide in its application, in addition to the
17 information required pursuant to subsection c. of this section:

18 (a) the location of its business;
19 (b) the names and addresses of the officers of the business;
20 (c) the names and addresses of capital investors and the amount
21 of capital contributed. Gifted ownership shall not be considered;
22 (d) personal and corporate tax returns for each owner, director,
23 and officer of the business for the past three consecutive years
24 (including W-2 forms);
25 (e) the bonding capacity and history of the business;
26 (f) the affiliation of the business or any of its owners, officers,
27 or directors with any other business entity;
28 (g) a current organizational chart;
29 (h) a representative list of current and prior clients for the past
30 two years, where applicable;
31 (i) a complete list of major real and personal property holdings
32 of the business;
33 (j) a complete disclosure of financial statements and balance
34 sheets;
35 (k) a complete listing of banking institutions with which the
36 business is affiliated;
37 (l) a complete listing of previously attained certifications and a
38 listing of all legal entities that denied certification, including but not
39 limited to certification as a small business, veteran's business,
40 disabled veteran-owned business, minority business, or women's
41 business; and
42 (m) copies of office or warehouse lease or rental agreements,
43 deeds, and mortgages.

44 (3) Upon approval of an application, a certificate issued
45 pursuant to this section shall be valid for five years, subject to the
46 annual certification verification statement. Every five years
47 thereafter, but no later than 20 days prior to the expiration of the
48 business's current certification, and not earlier than 60 days prior to

1 the expiration of the certification, a business interested in remaining
2 certified as an LGBTQ+ business shall comply with the certification
3 procedures in this subsection.

4 (4) An applicant shall fully and accurately complete all relevant
5 parts of the Uniform Certification Application. Failure to complete
6 an application may result in denial.

7 (5) Annually, the business shall submit, not more than 20 days
8 prior to the anniversary of the certification, an annual Certification
9 Verification Statement, in which it shall attest that there is no
10 change in the ownership, control, or any other factor of the business
11 affecting eligibility for certification as an LGBTQ+ business.

12 e. (1) If the business fails to submit the annual certification
13 verification statement by the anniversary date, the certification will
14 lapse and the business shall be removed from the SAVI. If the
15 business seeks to be re-certified, it shall reapply for certification
16 pursuant to subsection d. of this section.

17 (2) If the business submits the annual Certification Verification
18 Statement by the anniversary date, but either the Certification
19 Verification Statement or other information received by the division
20 indicates that the business is no longer eligible for certification as
21 an LGBTQ+ business, the division shall revoke the certification
22 pursuant to this section and, following revocation, the business shall
23 be removed from the SAVI. The business may appeal this
24 revocation, pursuant to the procedures established by the division.

25 f. Grounds for denial of an application pursuant to this section
26 shall be as follows:

27 (1) in the event that the division, after reviewing the application,
28 requests additional information or documentation that is necessary
29 to make a determination, the applicant's failure to comply with the
30 request within 30 days of the request shall result in denial; and

31 (2) if the applicant knowingly supplies incorrect, incomplete, or
32 inaccurate information, the applicant shall be disqualified and
33 barred from reapplying for certification for a period of 18 months
34 from the date of notice of disqualification.

35
36 4. a. When a business is determined by the division to be an
37 LGBTQ+ business, the business shall be added to the SAVI
38 database. Each business shall be placed on the database denoting its
39 status as an LGBTQ+ business.

40 b. When a business is placed on the SAVI database:

41 (1) that business shall be eligible for any appropriate State
42 programs and initiatives for LGBTQ+ businesses; and

43 (2) the business shall be informed by the division of its
44 certification status. The division shall also issue an individual
45 certification number exclusive to the business, as part of the
46 certification procedure.

- 1 5. An LGBTQ+ business may apply to be certified by the
2 division at any time, unless restricted pursuant to this act.
3
- 4 6. An applicant for certification as an LGBTQ+ business may
5 request, in writing, to the director, that its application be withdrawn.
6 A requested withdrawal shall not be prejudicial to any subsequent
7 application. An applicant may reapply not sooner than 90 calendar
8 days following the date of withdrawal, but not more than three
9 times in a calendar year. An applicant may withdraw once during a
10 12-month period.
11
- 12 7. a. The division may deny or revoke the certification of an
13 LGBTQ+ business if the division has determined that:
14 (1) the applicant has failed to meet certification criteria;
15 (2) the business has ceased to meet certification criteria;
16 (3) the applicant has not timely renewed its certification; or
17 (4) the applicant has knowingly provided incorrect or false
18 information.
19 b. When a determination to deny or revoke a certification is
20 made, the division shall notify the business through the mail or
21 electronic means, including electronic mail. The denial or
22 revocation shall be effective as of the date of the notice.
23 c. An LGBTQ+ business challenging the denial or revocation
24 shall submit an appeal to the director or designated hearing officer
25 setting forth, in detail, the grounds for such appeal in a written
26 statement. The appeal shall be filed within 10 business days
27 following the business's receipt of written notification that it was
28 denied certification, or that its certification was revoked. The
29 appeal shall contain:
30 (1) the specific grounds for challenging the denial of the
31 certification or the revocation of the certification, including all
32 arguments, materials, or other documentation that may support the
33 appellant's position; and
34 (2) a statement as to whether the appellant requests an
35 opportunity for an in-person presentation and the reason(s) for the
36 request.
37 d. The director, or designated hearing officer, may disregard
38 any appeal filed after the 10-day period.
39 e. The appeal accepted by the director or designated hearing
40 officer shall be resolved pursuant to the Administrative Procedure
41 Act, P.L.1968, c.410 (C.52:14B-1 et seq.). The determination
42 issued by the director, or designated hearing officer, shall be a final
43 agency decision, which shall be appealable to the Appellate
44 Division of the Superior Court.
45 f. The director, or designated hearing officer, is entitled to
46 request, receive, and review copies of any and all records and
47 documents deemed appropriate and relevant to the issues and
48 arguments set forth in the appeal. Upon receipt of the request by

1 the director or designated hearing officer, a business shall promptly
2 provide the requested records or information. The director or
3 designated hearing officer may also consider relevant information
4 requested and received from other parties deemed appropriate.

5 g. A business who receives a decision from the division that
6 the denial or revocation has been reaffirmed may reapply for
7 certification one year after the original date of denial or revocation.

8
9 8. a. A third-party may challenge the qualifications of an
10 applicant, or a certified entity, pursuant to this act for eligibility to
11 be certified as an LGBTQ+ business and be included in the SAVI
12 database.

13 b. A third-party finding cause to challenge the certification of
14 an LGBTQ+ business shall submit an appeal to the director, or
15 designated hearing officer, setting forth, in detail, the grounds for
16 the challenge in a written statement with copies to the challenged
17 business. The challenge shall contain the specific grounds for
18 challenging the certification, including all arguments, materials, or
19 other documentation that may support the challenger's position. A
20 challenge pursuant to this subsection is limited to the authenticity of
21 a business pursuant to this act to be certified as an LGBTQ+
22 business. The right to challenge a currently certified LGBTQ+
23 business is in addition to, and independent of, any protest hearing
24 rights that are afforded by any State contracting agency.

25 c. When the division, or designated hearing officer, receives a
26 challenge, the division shall notify the affected business in writing.

27 d. (1) Upon proper notice, the division or designated hearing
28 officer shall conduct a hearing on the matter pursuant to the
29 Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et
30 seq.). The determination issued by the director, or designated
31 hearing officer, shall be a final agency decision, which shall be
32 appealable to the Appellate Division of the Superior Court;

33 (2) The director, or designated hearing officer, is entitled to
34 request, receive, and review copies of any and all records and
35 documents deemed appropriate and relevant to the issues and
36 arguments set forth in the challenge. Upon receipt of the request by
37 the director or designated hearing officer, the business shall
38 promptly provide the requested records or information. The
39 director, or designated hearing officer, may also consider relevant
40 information requested and received from other parties deemed
41 appropriate; and

42 (3) A business who receives a decision from the director, or
43 designated hearing officer, that the certification has been revoked
44 may reapply for certification one year after the date of revocation.

45
46 9. a. Applicants for certification pursuant to this act shall
47 accurately and honestly supply all information required by the
48 division.

- 1 b. Any business certified by the division as an LGBTQ+
2 business shall immediately apprise the division of any
3 circumstances that in any way affect the ownership composition of
4 the business, or the control over the business, or otherwise affect
5 the eligibility of the business, pursuant to this act.
- 6 c. The failure of a business to report any changed
7 circumstances pursuant to subsection b. of this section, or the
8 falsification of information provided pursuant to subsection b. of
9 this section, shall disqualify the business for inclusion on the SAVI
10 database. When the division determines that a business has been
11 certified as an LGBTQ+ business on the basis of false information,
12 the division shall notify the business that it has been removed from
13 the SAVI database.
- 14 d. The certificate holder shall have 10 business days to file a
15 notice of appeal with the director or designated hearing officer. The
16 notice of appeal shall provide the specific grounds for appealing the
17 determination, including all relevant information.
- 18 e. Receipt of a proper appeal shall constitute a contested case,
19 eligible for hearing, pursuant to the Administrative Procedure Act,
20 P.L.1968, c.410 (C.52:14B-1 et seq.).
21
- 22 10. a. The division may form reciprocal agreements with, or
23 accept certifications by, other public and private certifying entities,
24 to facilitate LGBTQ+ business development and growth.
- 25 b. All reciprocal agreements shall provide that the quality of
26 the program of the other certifying agency is the relative equal of
27 the division's program.
- 28 c. Documentation from the reciprocal agency showing
29 certification shall be provided.
- 30 d. In the event that the division forms reciprocal agreements
31 with, or accepts certifications by, other public and or private
32 certifying entities, it shall post information on its website, including
33 the names of the entities, the effective date of accepting
34 certifications by other entities, and links to such entities.
35
- 36 11. a. All information and documents submitted to the division
37 as part of the certification application shall be deemed confidential,
38 unless required by applicable federal and State law. Information
39 required to be disclosed for purposes of inclusion in the SAVI
40 database is not deemed confidential.
- 41 b. Information and documents provided to the division may be
42 made available, subject to confidentiality limitations, pursuant to
43 P.L.1963, c.73 (C.47:1A-1 et seq.), where required during a
44 challenge or appeal proceeding pursuant to this act.
45
- 46 12. This act shall take effect on the 365th day next following the
47 date of enactment.