

ASSEMBLY, No. 2136

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JANUARY 16, 2014

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Prohibits employment-based discriminatory actions against persons engaged in unpaid internships.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT prohibiting employment-based discriminatory actions
2 against persons engaged in unpaid internships, and amending and
3 supplementing P.L.1945, c.169.

4

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

7

8 1. Section 3 of P.L.1945, c.169 (C.10:5-3) is amended to read
9 as follows:

10 3. The Legislature finds and declares that practices of
11 discrimination against any of its inhabitants, because of race, creed,
12 color, national origin, ancestry, age, sex, gender identity or
13 expression, affectional or sexual orientation, marital status, familial
14 status, liability for service in the Armed Forces of the United States,
15 disability or nationality, are matters of concern to the government
16 of the State, and that such discrimination threatens not only the
17 rights and proper privileges of the inhabitants of the State but
18 menaces the institutions and foundation of a free democratic State;
19 provided, however, that nothing in this expression of policy
20 prevents the making of legitimate distinctions between citizens and
21 aliens when required by federal law or otherwise necessary to
22 promote the national interest.

23 The Legislature further declares its opposition to such practices
24 of discrimination when directed against any person by reason of the
25 race, creed, color, national origin, ancestry, age, sex, gender
26 identity or expression, affectional or sexual orientation, marital
27 status, liability for service in the Armed Forces of the United States,
28 disability or nationality of that person or that person's spouse,
29 partners, members, stockholders, directors, officers, managers,
30 superintendents, agents, employees, unpaid interns, business
31 associates, suppliers, or customers, in order that the economic
32 prosperity and general welfare of the inhabitants of the State may
33 be protected and ensured.

34 The Legislature further finds that because of discrimination,
35 people suffer personal hardships, and the State suffers a grievous
36 harm. The personal hardships include: economic loss; time loss;
37 physical and emotional stress; and in some cases severe emotional
38 trauma, illness, homelessness or other irreparable harm resulting
39 from the strain of employment or employer internship
40 controversies; relocation, search and moving difficulties; anxiety
41 caused by lack of information, uncertainty, and resultant planning
42 difficulty; career, education, family and social disruption; and
43 adjustment problems, which particularly impact on those protected
44 by this act. Such harms have, under the common law, given rise to
45 legal remedies, including compensatory and punitive damages. The

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

Matter underlined thus is new matter.

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1 Legislature intends that such damages be available to all persons
2 protected by this act and that this act shall be liberally construed in
3 combination with other protections available under the laws of this
4 State.

5 (cf: P.L.2006, c.100, s.2)

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

9 5. As used in P.L.1945, c.169 (C.10:5-1 et seq.), unless a
10 different meaning clearly appears from the context:

11 a. "Person" includes one or more individuals, partnerships,
12 associations, organizations, labor organizations, corporations, legal
13 representatives, trustees, trustees in bankruptcy, receivers, and
14 fiduciaries.

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

17 c. "Labor organization" includes any organization which exists
18 and is constituted for the purpose, in whole or in part, of collective
19 bargaining, or of dealing with employers concerning grievances,
20 terms or conditions of employment, or of other mutual aid or
21 protection in connection with employment.

22 d. "Unlawful employment practice" and "unlawful
23 discrimination" include only those unlawful practices and acts
24 specified in section 11 of P.L.1945, c.169 (C.10:5-12) and section 3
25 of P.L. , c. (C.) (pending before the Legislature as this
26 bill).

27 e. "Employer" includes all persons as defined in subsection a.
28 of this section unless otherwise specifically exempt under another
29 section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State,
30 any political or civil subdivision thereof, and all public officers,
31 agencies, boards or bodies.

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

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

41 h. "Division" means the "Division on Civil Rights" created by
42 P.L.1945, c.169 (C.10:5-1 et seq.).

43 i. "Attorney General" means the Attorney General of the State
44 of New Jersey or his representative or designee.

45 j. "Commission" means the Commission on Civil Rights
46 created by P.L.1945, c.169 (C.10:5-1 et seq.).

47 k. "Director" means the Director of the Division on Civil
48 Rights.

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1 l. "A place of public accommodation" shall include, but not be
2 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
3 summer camp, day camp, or resort camp, whether for entertainment
4 of transient guests or accommodation of those seeking health,
5 recreation or rest; any producer, manufacturer, wholesaler,
6 distributor, retail shop, store, establishment, or concession dealing
7 with goods or services of any kind; any restaurant, eating house, or
8 place where food is sold for consumption on the premises; any
9 place maintained for the sale of ice cream, ice and fruit preparations
10 or their derivatives, soda water or confections, or where any
11 beverages of any kind are retailed for consumption on the premises;
12 any garage, any public conveyance operated on land or water, or in
13 the air, any stations and terminals thereof; any bathhouse,
14 boardwalk, or seashore accommodation; any auditorium, meeting
15 place, or hall; any theatre, motion-picture house, music hall, roof
16 garden, skating rink, swimming pool, amusement and recreation
17 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
18 pool parlor, or other place of amusement; any comfort station; any
19 dispensary, clinic or hospital; any public library; any kindergarten,
20 primary and secondary school, trade or business school, high
21 school, academy, college and university, or any educational
22 institution under the supervision of the State Board of Education, or
23 the Commissioner of Education of the State of New Jersey.
24 Nothing herein contained shall be construed to include or to apply
25 to any institution, bona fide club, or place of accommodation, which
26 is in its nature distinctly private; nor shall anything herein contained
27 apply to any educational facility operated or maintained by a bona
28 fide religious or sectarian institution, and the right of a natural
29 parent or one in loco parentis to direct the education and upbringing
30 of a child under his control is hereby affirmed; nor shall anything
31 herein contained be construed to bar any private secondary or post
32 secondary school from using in good faith criteria other than race,
33 creed, color, national origin, ancestry, gender identity or expression
34 or affectional or sexual orientation in the admission of students.

35 m. "A publicly assisted housing accommodation" shall include
36 all housing built with public funds or public assistance pursuant to
37 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
38 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
39 c.184, and all housing financed in whole or in part by a loan,
40 whether or not secured by a mortgage, the repayment of which is
41 guaranteed or insured by the federal government or any agency
42 thereof.

43 n. The term "real property" includes real estate, lands,
44 tenements and hereditaments, corporeal and incorporeal, and
45 leaseholds, provided, however, that, except as to publicly assisted
46 housing accommodations, the provisions of this act shall not apply
47 to the rental: (1) of a single apartment or flat in a two-family
48 dwelling, the other occupancy unit of which is occupied by the

1 owner as a residence; or (2) of a room or rooms to another person or
2 persons by the owner or occupant of a one-family dwelling
3 occupied by the owner or occupant as a residence at the time of
4 such rental. Nothing herein contained shall be construed to bar any
5 religious or denominational institution or organization, or any
6 organization operated for charitable or educational purposes, which
7 is operated, supervised or controlled by or in connection with a
8 religious organization, in the sale, lease or rental of real property,
9 from limiting admission to or giving preference to persons of the
10 same religion or denomination or from making such selection as is
11 calculated by such organization to promote the religious principles
12 for which it is established or maintained. Nor does any provision
13 under this act regarding discrimination on the basis of familial
14 status apply with respect to housing for older persons.

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

38 p. "Real estate salesperson" includes any person who, for
39 compensation, valuable consideration or commission, or other thing
40 of value, or by reason of a promise or reasonable expectation
41 thereof, is employed by and operates under the supervision of a
42 licensed real estate broker to sell or offer to sell, buy or offer to buy
43 or negotiate the purchase, sale or exchange of real estate, or offers
44 or attempts to negotiate a loan secured or to be secured by a
45 mortgage or other encumbrance upon or transfer of real estate, or to
46 lease or rent, or offer to lease or rent any real estate for others, or to
47 collect rents for the use of real estate, or to solicit for prospective
48 purchasers or lessees of real estate, or who is employed by a

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1 licensed real estate broker to sell or offer to sell lots or other parcels
2 of real estate, at a stated salary, or upon a commission, or upon a
3 salary and commission, or otherwise to sell real estate, or any parts
4 thereof, in lots or other parcels.

5 q. "Disability" means physical disability, infirmity,
6 malformation or disfigurement which is caused by bodily injury,
7 birth defect or illness including epilepsy and other seizure
8 disorders, and which shall include, but not be limited to, any degree
9 of paralysis, amputation, lack of physical coordination, blindness or
10 visual impediment, deafness or hearing impediment, muteness or
11 speech impediment or physical reliance on a service or guide dog,
12 wheelchair, or other remedial appliance or device, or any mental,
13 psychological or developmental disability, including autism
14 spectrum disorders, resulting from anatomical, psychological,
15 physiological or neurological conditions which prevents the normal
16 exercise of any bodily or mental functions or is demonstrable,
17 medically or psychologically, by accepted clinical or laboratory
18 diagnostic techniques. Disability shall also mean AIDS or HIV
19 infection.

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

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

33 t. "Guide or service dog trainer" means any person who is
34 employed by an organization generally recognized by agencies
35 involved in the rehabilitation of persons with disabilities as
36 reputable and competent to provide dogs with training, and who is
37 actually involved in the training process.

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

45 v. "Public facility" means any place of public accommodation
46 and any street, highway, sidewalk, walkway, public building, and
47 any other place or structure to which the general public is regularly,
48 normally or customarily permitted or invited.

- 1 w. "Deaf person" means any person whose hearing is so
2 severely impaired that the person is unable to hear and understand
3 normal conversational speech through the unaided ear alone, and
4 who must depend primarily on a supportive device or visual
5 communication such as writing, lip reading, sign language, and
6 gestures.
- 7 x. "Atypical hereditary cellular or blood trait" means sickle cell
8 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
9 fibrosis trait.
- 10 y. "Sickle cell trait" means the condition wherein the major
11 natural hemoglobin components present in the blood of the
12 individual are hemoglobin A (normal) and hemoglobin S (sickle
13 hemoglobin) as defined by standard chemical and physical analytic
14 techniques, including electrophoresis; and the proportion of
15 hemoglobin A is greater than the proportion of hemoglobin S or one
16 natural parent of the individual is shown to have only normal
17 hemoglobin components (hemoglobin A, hemoglobin A2,
18 hemoglobin F) in the normal proportions by standard chemical and
19 physical analytic tests.
- 20 z. "Hemoglobin C trait" means the condition wherein the major
21 natural hemoglobin components present in the blood of the
22 individual are hemoglobin A (normal) and hemoglobin C as defined
23 by standard chemical and physical analytic techniques, including
24 electrophoresis; and the proportion of hemoglobin A is greater than
25 the proportion of hemoglobin C or one natural parent of the
26 individual is shown to have only normal hemoglobin components
27 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
28 proportions by standard chemical and physical analytic tests.
- 29 aa. "Thalassemia trait" means the presence of the thalassemia
30 gene which in combination with another similar gene results in the
31 chronic hereditary disease Cooley's anemia.
- 32 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
33 which in combination with another similar gene results in the
34 chronic hereditary disease Tay-Sachs.
- 35 cc. "Cystic fibrosis trait" means the presence of the cystic
36 fibrosis gene which in combination with another similar gene
37 results in the chronic hereditary disease cystic fibrosis.
- 38 dd. "Service dog" means any dog individually trained to the
39 requirements of a person with a disability including, but not limited
40 to minimal protection work, rescue work, pulling a wheelchair or
41 retrieving dropped items. This term shall include a "seizure dog"
42 trained to alert or otherwise assist persons subject to epilepsy or
43 other seizure disorders.
- 44 ee. "Qualified Medicaid applicant" means an individual who is a
45 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).
- 46 ff. "AIDS" means acquired **[immune deficiency]**
47 immunodeficiency syndrome as defined by the Centers for Disease
48 Control and Prevention of the United States Public Health Service.

- 1 gg. "HIV infection" means infection with the human
2 immunodeficiency virus or any other related virus identified as a
3 probable causative agent of AIDS.
- 4 hh. "Affectional or sexual orientation" means male or female
5 heterosexuality, homosexuality or bisexuality by inclination,
6 practice, identity or expression, having a history thereof or being
7 perceived, presumed or identified by others as having such an
8 orientation.
- 9 ii. "Heterosexuality" means affectional, emotional or physical
10 attraction or behavior which is primarily directed towards persons
11 of the other gender.
- 12 jj. "Homosexuality" means affectional, emotional or physical
13 attraction or behavior which is primarily directed towards persons
14 of the same gender.
- 15 kk. "Bisexuality" means affectional, emotional or physical
16 attraction or behavior which is directed towards persons of either
17 gender.
- 18 ll. "Familial status" means being the natural parent of a child,
19 the adoptive parent of a child, the resource family parent of a child,
20 having a "parent and child relationship" with a child as defined by
21 State law, or having sole or joint legal or physical custody, care,
22 guardianship, or visitation with a child, or any person who is
23 pregnant or is in the process of securing legal custody of any
24 individual who has not attained the age of 18 years.
- 25 mm. "Housing for older persons" means housing:
- 26 (1) provided under any State program that the Attorney General
27 determines is specifically designed and operated to assist elderly
28 persons (as defined in the State program); or provided under any
29 federal program that the United States Department of Housing and
30 Urban Development determines is specifically designed and
31 operated to assist elderly persons (as defined in the federal
32 program); or
- 33 (2) intended for, and solely occupied by persons 62 years of age
34 or older; or
- 35 (3) intended and operated for occupancy by at least one person
36 55 years of age or older per unit. In determining whether housing
37 qualifies as housing for older persons under this subsection, the
38 Attorney General shall adopt regulations which require at least the
39 following factors:
- 40 (a) the existence of significant facilities and services
41 specifically designed to meet the physical or social needs of older
42 persons, or if the provision of such facilities and services is not
43 practicable, that such housing is necessary to provide important
44 housing opportunities for older persons; and
- 45 (b) that at least 80 percent of the units are occupied by at least
46 one person 55 years of age or older per unit; and

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

4 Housing shall not fail to meet the requirements for housing for
5 older persons by reason of: persons residing in such housing as of
6 September 13, 1988 not meeting the age requirements of this
7 subsection, provided that new occupants of such housing meet the
8 age requirements of this subsection; or unoccupied units, provided
9 that such units are reserved for occupancy by persons who meet the
10 age requirements of this subsection.

11 nn. "Genetic characteristic" means any inherited gene or
12 chromosome, or alteration thereof, that is scientifically or medically
13 believed to predispose an individual to a disease, disorder or
14 syndrome, or to be associated with a statistically significant
15 increased risk of development of a disease, disorder or syndrome.

16 oo. "Genetic information" means the information about genes,
17 gene products or inherited characteristics that may derive from an
18 individual or family member.

19 pp. "Genetic test" means a test for determining the presence or
20 absence of an inherited genetic characteristic in an individual,
21 including tests of nucleic acids such as DNA, RNA and
22 mitochondrial DNA, chromosomes or proteins in order to identify a
23 predisposing genetic characteristic.

24 qq. "Domestic partnership" means a domestic partnership
25 established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

26 rr. "Gender identity or expression" means having or being
27 perceived as having a gender related identity or expression whether
28 or not stereotypically associated with a person's assigned sex at
29 birth.

30 ss. "Civil **Union** union" means a legally recognized union of
31 two eligible individuals established pursuant to R.S.37:1-1 et seq.
32 and P.L.2006, c.103 (C.37:1-28 et al.).

33 tt. "Premium wages" means additional remuneration for night,
34 weekend or holiday work, or for standby or irregular duty.

35 uu. "Premium benefit" means an employment benefit, such as
36 seniority, group life insurance, health insurance, disability
37 insurance, sick leave, annual leave, or an educational or pension
38 benefit that is greater than the employment benefit due the
39 employee for an equivalent period of work performed during the
40 regular work schedule of the employee.

41 (cf: P.L.2009, c.205, s.1)

42
43 3. (New section) a. As used in this section, "unpaid intern"
44 means an individual who performs work for an employer for the
45 purpose of training, under the following circumstances:

46 (1) the employer is not committed to hiring the individual as an
47 employee or in any other compensated capacity at the conclusion of
48 the training period;

1 (2) the employer and the individual agree in writing that the
2 individual is not entitled to any compensation for the work
3 performed; and

4 (3) any work performed by the individual: (a) supplements
5 employer training given in an educational environment intended to
6 enhance the employability of the individual; (b) provides
7 experience for the benefit of the individual; and (c) does not
8 displace employees of the employer.

9 b. All persons shall have the opportunity to obtain unpaid
10 internships with an employer without discrimination because of
11 race, creed, color, national origin, ancestry, age, marital status,
12 affectional or sexual orientation, familial status, disability,
13 nationality, sex, gender identity or expression or source of lawful
14 income used for rental or mortgage payments, subject only to
15 conditions and limitations applicable alike to all persons.

16 c. It shall be an unlawful employment practice:

17 (1) For an employer, because of the race, creed, color, national
18 origin, ancestry, age, marital status, civil union status, domestic
19 partnership status, affectional or sexual orientation, genetic
20 information, sex, gender identity or expression, disability or
21 atypical hereditary cellular or blood trait of any individual, or
22 because of the liability for service in the Armed Forces of the
23 United States or the nationality of any individual, or because of the
24 refusal to submit to a genetic test or make available the results of a
25 genetic test to an employer, to refuse to engage as an unpaid intern,
26 or to bar or to discharge, unless justified by lawful considerations
27 other than age, from an unpaid internship the individual or to
28 discriminate against the individual in terms, conditions, or
29 privileges of an unpaid internship; provided, however, it shall not
30 be an unlawful employment practice to refuse to accept for an
31 unpaid internship any applicant who has received a notice of
32 induction or orders to report for active duty in the armed forces;
33 provided further that nothing herein contained shall be construed to
34 bar an employer from refusing to accept for an unpaid internship
35 any person on the basis of sex in those certain circumstances where
36 sex is a bona fide occupational qualification, reasonably necessary
37 to the normal operation of the particular business or enterprise;
38 provided further that nothing herein contained shall be construed to
39 bar an employer from refusing to accept for an unpaid internship
40 any person over 70 years of age; provided further that it shall not be
41 an unlawful employment practice for a club exclusively social or
42 fraternal to use club membership as a uniform qualification for an
43 unpaid internship, or for a religious association or organization to
44 utilize religious affiliation as a uniform qualification in the unpaid
45 internship of clergy, religious teachers, or other individuals engaged
46 in the religious activities of the association or organization, or in
47 following the tenets of its religion in establishing and utilizing
48 criteria for the unpaid intern's internship; and provided further that

1 an employer may restrict an unpaid internship to citizens of the
2 United States where such restriction is required by federal law or is
3 otherwise necessary to protect the national interest.

4 (2) For any employer to print or circulate or cause to be printed
5 or circulated any statement, advertisement or publication, or to use
6 any form of application for an unpaid internship, or to make an
7 inquiry in connection with a prospective unpaid internship, which
8 expresses, directly or indirectly, any limitation, specification or
9 discrimination as to race, creed, color, national origin, ancestry,
10 age, marital status, civil union status, domestic partnership status,
11 affectional or sexual orientation, gender identity or expression,
12 disability, nationality or sex or liability of any applicant for
13 employment for service in the Armed Forces of the United States,
14 or any intent to make any limitation, specification, or discrimination
15 set forth in this subsection, unless based upon a bona fide
16 occupational qualification.

17 (3) (a) For any employer to impose upon an individual as a
18 condition of obtaining or retaining an unpaid internship, including
19 opportunities for advancement or transfers, any terms or conditions
20 that would require an individual to violate or forego a sincerely held
21 religious practice or religious observance, including but not limited
22 to the observance of any particular day or days or any portion
23 thereof as a Sabbath or other holy day in accordance with the
24 requirements of the religion or religious belief, unless, after
25 engaging in a bona fide effort, the employer demonstrates that it is
26 unable to reasonably accommodate the unpaid intern's religious
27 observance or practice without undue hardship on the conduct of the
28 employer's business.

29 (b) For an employer to refuse to permit an unpaid intern to
30 utilize leave, as provided for in this paragraph, which is solely used
31 to accommodate the unpaid intern's sincerely held religious
32 observance or practice. Except where it would cause an employer
33 to incur an undue hardship, an individual shall not be required to
34 remain at the individual's place of internship during any day or
35 days or portion thereof that, as a requirement of his religion, the
36 individual observes as his Sabbath or other holy day, including a
37 reasonable time prior and subsequent thereto for travel between the
38 place of internship and home; provided that any absence from work
39 described herein shall, wherever practicable in the reasonable
40 judgment of the employer, be made up by an equivalent amount of
41 time and work at some other mutually convenient time.

42 (c) (i) For purposes of this paragraph, "undue hardship" means
43 an accommodation requiring unreasonable expense or difficulty, or
44 unreasonable interference with the safe or efficient operation of the
45 workplace.

46 (ii) In determining whether the accommodation constitutes an
47 undue hardship, the factors considered shall include:

1 the identifiable cost of the accommodation, including the costs of
2 loss of productivity, in relation to the size and operating cost of the
3 employer;

4 the number of individuals who will need the particular
5 accommodation for a sincerely held religious observance or
6 practice; and

7 for an employer with multiple facilities, the degree to which the
8 geographic separateness or administrative or fiscal relationship of
9 the facilities will make the accommodation more difficult or
10 expensive.

11 (iii) An accommodation shall be considered to constitute an
12 undue hardship if it will result in the inability of an unpaid intern to
13 perform the essential functions of the position for which the
14 individual is engaged as an intern.

15 (iv) The provisions of this paragraph shall be applicable only to
16 reasonable accommodations of religious observances and shall not
17 supersede any definition of undue hardship or standards for
18 reasonable accommodation of the disabilities of unpaid interns.
19 This paragraph shall not apply where the uniform application of
20 terms and conditions of attendance to unpaid interns is essential to
21 prevent undue hardship to the employer. The burden of proof
22 regarding the applicability of this subparagraph shall be upon
23 the employer.

24 (4) For any employer to take reprisals against any unpaid intern
25 for requesting from any employee or former employee, or any other
26 unpaid intern or former unpaid intern, the gender, race, ethnicity,
27 military status, or national origin of any employee or former
28 employee, or any unpaid intern or former unpaid intern of the
29 employer, regardless of whether the request was responded to, if the
30 purpose of the request for the information was to assist in
31 investigating the possibility of the occurrence of, or in taking of
32 legal action regarding, potential discriminatory treatment against
33 unpaid interns. Nothing in this paragraph shall be construed to
34 require an unpaid intern to disclose information about an employee
35 or unpaid intern to any unpaid intern or former unpaid intern of the
36 employer, or to any authorized representative thereof.

37 d. The enforcement of violations of this section shall be done
38 in the same manner, and available damages, penalties, and other
39 remedies for violations shall be to the same extent as for unlawful
40 employment practices against employees under the provisions of the
41 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).
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43 4. This act shall take effect on the first day of the third month
44 next following enactment, and apply to any violation against an
45 unpaid intern occurring on or after the effective date.

STATEMENT

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This bill would prohibit employment-based discriminatory actions against persons engaged in unpaid internships. The bill does so by incorporating unpaid interns into the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.).

The discriminatory practices that would be prohibited are based upon existing unlawful employment practices concerning employees of an employer as set forth in that act. Thus, it would be unlawful to discriminate against an unpaid intern on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments. Such discrimination would include refusing to engage an individual as an unpaid intern, or to bar or discharge an individual from an unpaid internship. It would also include discrimination in the terms, conditions, or privileges of an unpaid internship.

Further discrimination that would be prohibited by the bill includes any employer-imposed terms or conditions requiring an unpaid intern, or individual seeking an unpaid internship, to violate or forego a sincerely held religious practice or observance.

The enforcement of violations of the bill would be done in the same manner, and available damages, penalties, and other remedies for violations would be to the same extent as for unlawful employment practices against employees under the provisions of the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.). Thus, either an individual or the State could bring actions against an employer, and that employer could be held liable for punitive damages, civil penalties, and attorney’s fees, in addition to other damages, and legal and equitable relief resulting from the employer’s action.