

ASSEMBLY, No. 3580

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

SYNOPSIS

Requires public institutions of higher education to review employment history of certain prospective employees to ascertain allegations of sexual harassment or sexual assault.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning certain employees of public institutions of
2 higher education and supplementing chapter 62 of Title 18A of
3 the New Jersey Statutes.

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

7
8 1. A public institution of higher education shall not employ for
9 pay or contract for the paid services of any person serving in a
10 position which involves regular contact with students unless the
11 institution:

12 a. Requires the applicant to provide:

13 (1) A list, including name, address, telephone number and other
14 relevant contact information of the applicant's:

15 (a) current employer; and

16 (b) all former employers within the last 10 years that were
17 institutions of higher education; and

18 (2) A written authorization that consents to and authorizes
19 disclosure of the information requested under subsection b. of this
20 section and the release of related records by the applicant's
21 employers listed under paragraph (1) of this subsection, and that
22 releases those employers from liability that may arise from the
23 disclosure or release of records;

24 (3) A written statement as to whether the applicant:

25 (a) has been, or is currently, the subject of any sexual
26 harassment or sexual assault investigation by any employer, State
27 licensing agency, or law enforcement agency, unless the
28 investigation resulted in a finding that the allegations were false or
29 the alleged incident was not substantiated; or

30 (b) has ever been disciplined, discharged, nonrenewed, asked to
31 resign from employment, resigned from or otherwise separated from
32 any employment while allegations of sexual harassment or sexual
33 assault were pending or under investigation, or due to an
34 adjudication or finding of sexual harassment or sexual assault.

35 b. Conducts a review of the employment history of the
36 applicant by contacting those employers listed by the applicant
37 under the provisions of paragraph (1) of subsection a. of this section
38 and requesting the following information:

39 (1) The dates of employment of the applicant; and

40 (2) A statement as to whether the applicant:

41 (a) was, or is currently, the subject of any sexual harassment or
42 sexual assault investigation by any employer, State licensing
43 agency, or law enforcement agency, unless the investigation
44 resulted in a finding that the allegations were false or the alleged
45 incident was not substantiated; or

46 (b) was disciplined, discharged, nonrenewed, asked to resign
47 from employment, resigned from or otherwise separated from any
48 employment while allegations of sexual harassment or sexual

1 assault were pending or under investigation, or due to an
2 adjudication or finding of sexual harassment or sexual assault.

3 The review of the employment history may be conducted through
4 telephonic, electronic, or written communications. If the review is
5 conducted by telephone, the results of the review shall be
6 documented in writing by the prospective employer.

7

8 2. a. An applicant who willfully provides false information or
9 willfully fails to disclose information required in subsection a. of
10 section 1 of this act:

11 (1) shall be subject to discipline up to, and including,
12 termination or denial of employment;

13 (2) may be deemed in violation of subsection a. of N.J.S.2C:28-
14 3; and

15 (3) may be subject to a civil penalty of not more than \$500
16 which shall be collected in proceedings in accordance with the
17 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
18 et seq.).

19 b. A public institution of higher education shall include a
20 notification of the penalties set forth in this section on all
21 applications for employment for positions which involve regular
22 contact with students.

23

24 3. a. No later than 20 days after receiving a request for
25 information under subsection b. of section 1 of this act, an employer
26 that has or had an employment relationship within the last 10 years
27 with the applicant shall disclose the information requested.

28 b. The prospective employer, in conducting the review of the
29 employment history of an applicant whose current or former
30 employers are out-of-State, shall make, and document with
31 specificity, diligent efforts to:

32 (1) verify the information provided by the applicant pursuant to
33 subsection a. of section 1 of this act; and

34 (2) obtain from any out-of-State employers listed by the
35 applicant the information requested pursuant to subsection b. of
36 section 1 of this act.

37 c. The failure of an employer to provide the information
38 requested pursuant to subsection b. of section 1 of this act within
39 the 20-day timeframe established under subsection a. of this section
40 may be grounds for the automatic disqualification of an applicant
41 from employment with the public institution of higher education.

42 d. An institution shall not be liable for any claims brought by
43 an applicant who is not offered employment or whose employment
44 is terminated:

45 (1) because of any information received by the institution from
46 an employer pursuant to section 1 of this act; or

1 (2) due to the inability of the institution to conduct a full review
2 of the applicant's employment history pursuant to subsection b. of
3 section 1 of this act.

4 e. A public institution of higher education shall have the right
5 to immediately terminate an individual's employment or rescind an
6 offer of employment if:

7 (1) the applicant is offered employment or commences
8 employment with the institution following the effective date of this
9 act; and

10 (2) information regarding the applicant's history of sexual
11 harassment or sexual assault is subsequently discovered or obtained
12 by the employer that the employer determines disqualifies the
13 applicant or employee from employment with the institution.

14 The termination of employment pursuant to this subsection shall
15 not be subject to any grievance or appeals procedures or tenure
16 proceedings pursuant to any collectively bargained or negotiated
17 agreement or any law, rule, or regulation.

18
19 4. a. After reviewing the information disclosed under
20 subsection b. of section 1 of this act and finding an affirmative
21 response to any of the inquiries in paragraph (2) of subsection b. of
22 section 1 of this act or if there was an affirmative response to any of
23 the inquiries in paragraph (3) of subsection a. of section 1 of this
24 act, the prospective employer, prior to determining to continue with
25 the applicant's job application process, shall make further inquiries
26 of the applicant's current or former employer to ascertain additional
27 details regarding the matter disclosed.

28 b. A public institution of higher education may employ or
29 contract with an applicant on a provisional basis for a period not to
30 exceed 90 days pending review by the institution of information
31 received pursuant to section 1 of this act, provided that all of the
32 following conditions are satisfied:

33 (1) the applicant has complied with subsection a. of section 1 of
34 this act;

35 (2) the institution has no knowledge or information pertaining to
36 the applicant that the applicant is required to disclose pursuant to
37 paragraph (3) of subsection a. of section 1 of this act; and

38 (3) the institution determines that special or emergent
39 circumstances exist that justify the temporary employment of the
40 applicant.

41
42 5. a. Information received by an employer under this act shall
43 not be deemed a public record under P.L.1963, c.73 (C.47:1A-1 et
44 seq.) or the common law concerning access to public records.

45 b. An employer, a public institution of higher education, or an
46 administrator at a public institution of higher education who
47 provides information or records about a current or former employee
48 or applicant shall be immune from criminal and civil liability for

1 the disclosure of the information, unless the information or records
2 provided were knowingly false. The immunity shall be in addition
3 to and not in limitation of any other immunity provided by law.

4
5 6. a. On or after the effective date of this act, a public
6 institution of higher education may not enter into a collectively
7 bargained or negotiated agreement, an employment contract, an
8 agreement for resignation or termination, a severance agreement, or
9 any other contract or agreement or take any action that:

10 (1) has the effect of suppressing or destroying information
11 relating to an investigation related to a report of suspected sexual
12 harassment or sexual assault by a current or former employee;

13 (2) affects the ability of the institution to report suspected sexual
14 harassment or sexual assault to the appropriate authorities; or

15 (3) requires the institution to expunge information about
16 allegations or finding of suspected sexual harassment or sexual
17 assault from any documents maintained by the institution, unless
18 after investigation the allegations are found to be false or the
19 alleged incident of sexual harassment or sexual assault has not been
20 substantiated.

21 b. Any provision of an employment contract or agreement for
22 resignation or termination or a severance agreement that is
23 executed, amended, or entered into after the effective date of this
24 act and that is contrary to this section shall be void and
25 unenforceable.

26
27 7. The Secretary of Higher Education shall establish a public
28 awareness campaign to publicize the provisions of this act and to
29 ensure applicants and employers are aware of their respective rights
30 and responsibilities under this act.

31
32 8. This act shall take effect on the first day of the second month
33 following enactment, but the Secretary of Higher Education may
34 take any anticipatory administrative action in advance as may be
35 necessary for the implementation of this act.

36 37 38 STATEMENT

39
40 This bill prohibits a public institution of higher education from
41 employing a person serving in a position which involves regular
42 contact with students unless the institution conducts a review of the
43 employment history of the applicant by contacting former and
44 current employers and requesting information regarding sexual
45 harassment and sexual assault allegations. The applicant will only
46 be required to list employers from the prior ten years that were
47 institutions of higher education. The public institution of higher

1 education must ask those employers for a statement as to whether
2 the applicant:

- 3 • Was, or is currently, the subject of any sexual harassment or
4 sexual assault investigation by any employer, State licensing
5 agency, or law enforcement agency; or
- 6 • was disciplined, discharged, nonrenewed, asked to resign
7 from employment, resigned from or otherwise separated
8 from any employment while allegations of sexual
9 harassment or sexual assault were pending or under
10 investigation, or due to an adjudication or finding of sexual
11 harassment or sexual assault.

12 The applicant must also provide his own written statement
13 disclosing any of the same matters.

14 The applicant must provide a written authorization that consents
15 to and authorizes disclosure of the information requested by the
16 prospective employer and releases the applicant's former and
17 current employers from any liability arising from the disclosure.

18 On or after the effective date of this bill, a public institution of
19 higher education may not enter into a collectively bargained or
20 negotiated agreement, an employment contract, an agreement for
21 resignation or termination, a severance agreement, or any other
22 contract or agreement or take any action that:

- 23 • has the effect of suppressing or destroying information
24 relating to an investigation related to a report of suspected
25 sexual harassment or sexual assault by a current or former
26 employee;
- 27 • affects the ability of the institution to report suspected
28 sexual harassment or sexual assault to the appropriate
29 authorities; or
- 30 • requires the institution to expunge information about
31 allegations or findings of suspected sexual harassment or
32 sexual assault from any documents maintained by the
33 institution, unless after investigation the allegations are
34 found to be false or the alleged incident of sexual
35 harassment or sexual assault has not been substantiated.

36 An applicant who gives false information or willfully fails to
37 disclose information required to be provided under the bill will be
38 subject to discipline, including termination or denial of
39 employment. The applicant also may be deemed in violation of
40 subsection a. of N.J.S.2C:28-3, and may be subject to certain civil
41 penalties. The prospective employer is required to provide
42 notification of these possible penalties to prospective employees in
43 the employment application.