

ASSEMBLY, No. 4876

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED OCTOBER 26, 2020

Sponsored by:

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Provides right of action for individuals alleging denial of professional credential by State is result of policy or process causing disparate impact on basis of race or ethnicity.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the issuance of a professional license or other
2 authorization to practice a profession and supplementing
3 P.L.1945, c.169 (C.10:5-1 et seq.).

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

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8 1. a. A person denied a license, certification, registration, or
9 other authorization by an entity created under Title 45 or Title 52 of
10 the Revised Statutes or by a principal department of the Executive
11 Branch of State government, an entity within a department, or any
12 entity created to license or otherwise regulate a profession and who
13 claims the denial is the result of a policy or process promulgated or
14 otherwise effectuated by the entity that causes a disparate impact on
15 the issuance of a license, certification, registration, or other
16 authorization on the basis of race or ethnicity shall have the right to
17 file a verified complaint in writing with the Division of Civil Rights
18 in the New Jersey Department of Law and Public Safety or the New
19 Jersey Superior Court.

20 b. The process for filing a verified complaint pursuant to this
21 act shall follow the provisions of section 12 of P.L.1945, c.169
22 (C.10:5-13) regarding filing, prosecution, jury trials, remedies and
23 damages.

24 c. The individual filing the complaint shall have the burden to
25 demonstrate, by a preponderance of the evidence, that an
26 application for licensure was denied by a licensing entity as a result
27 of a policy or process that causes a disparate racial or ethnic impact.
28 The individual shall demonstrate that the disparate impact is caused
29 by:

30 (1) a policy or process that has a disproportionate impact on
31 individuals of a certain race or ethnicity;

32 (2) a policy or process that is applied inconsistently or
33 unreasonably by the licensing entity; or

34 (3) factors considered by the licensing entity that are unrelated
35 to the profession in which the individual seeks a license.

36 d. It shall be considered a defense against a complaint brought
37 pursuant to paragraph (1) of subsection c. of this section that the
38 rationale for a policy or process justifies the policy or process
39 having an identifiable disparate impact on the basis of race or
40 ethnicity. The rationale for a policy or process shall be considered
41 justified if the licensing entity demonstrates that:

42 (1) the disparate impact is based on one or more legitimate,
43 bona fide factors, such as training, education, experience, or
44 examination, or the quality of services provided;

45 (2) the factor or factors are not based on, and do not perpetuate,
46 a disparate impact based on race or ethnicity;

47 (3) each of the factors is applied reasonably;

1 (4) one or more of the factors account for the entire disparate
2 impact; and

3 (5) the factors are related to the license being sought.

4 A factor shall not apply if the individual demonstrates that there
5 are alternative policies or processes that would serve the same
6 purpose without producing the disparate impact.

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8 2. This act shall take effect immediately.

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STATEMENT

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13 This bill creates a private right of action for an individual who
14 was denied a professional license, certification, registration or other
15 authorization by an entity created under Title 45 or Title 52 of the
16 Revised Statutes, or by a principal department of the Executive
17 Branch of State government, an entity within a department or any
18 entity created to license or otherwise regulate a profession and who
19 claims the denial is the result of a policy or process promulgated or
20 otherwise effectuated by the State entity that causes a disparate
21 impact on the issuance of a license, certification, registration or
22 other authorization on the basis of race or ethnicity. Under the bill,
23 the individual has a right to file a verified complaint in writing with
24 the Division of Civil Rights in the New Jersey Department of Law
25 and Public Safety or the New Jersey Superior Court.

26 An individual must follow the provisions of the law against
27 discrimination in order to bring an action pursuant to the bill.
28 Additionally, under the bill, the individual filing a complaint has
29 the burden of demonstrating, by a preponderance of the evidence,
30 that an application for licensure was denied by a licensing entity as
31 a result of a policy or process that causes a disparate racial impact.

32 The Division on Civil Rights or New Jersey Superior Court is to
33 consider if the individual demonstrates that a disparate impact is
34 caused by:

35 (1) a policy or process that has a disproportionate impact on
36 individuals of a certain race or ethnicity;

37 (2) a policy or process that is applied inconsistently or
38 unreasonably by a licensing entity; or

39 (3) factors considered by a licensing entity that are unrelated to
40 the profession in which the individual seeks a license.

41 In the bill, it is considered a defense for a licensing entity if the
42 rationale for a policy or process justifies the policy or process
43 having an identifiable disparate impact on the basis of race or
44 ethnicity. The rationale can be justified if the licensing entity
45 demonstrates that:

46 (1) the disparate impact is based on one or more legitimate, bona
47 fide factors, such as training, education, experience, or examination,
48 or the quality of services provided;

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- 1 (2) the factor or factors are not based on, and do not perpetuate,
- 2 a disparate impact based on race or ethnicity;
- 3 (3) each of the factors is applied reasonably;
- 4 (4) one or more of the factors account for the entire disparate
- 5 impact; and
- 6 (5) the factors are related to the license being sought.
- 7 The bill provides that a factor shall not apply if it is
- 8 demonstrated that there are alternative policies or processes that
- 9 would serve the same purpose without producing the disparate
- 10 impact.