

SENATE, No. 694

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

SYNOPSIS

Reaffirms and clarifies that Attorney General and Division on Civil Rights may initiate actions in Superior Court to enforce “Law Against Discrimination.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the enforcement of the “Law Against
2 Discrimination,” and amending P.L.1992, c.146, P.L.1945,
3 c.169, and P.L.1983, c.412.

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

7
8 1. Section 12 of P.L.1992, c.146 (C.10:5-12.5) is amended to
9 read as follows:

10 12. a. It shall be an unlawful discrimination for a municipality,
11 county, or other local civil or political subdivision of the State of
12 New Jersey, or an officer, employee, or agent thereof, to exercise
13 the power to regulate land use or housing in a manner that
14 discriminates on the basis of race, creed, color, national origin,
15 ancestry, marital status, familial status, sex, gender identity or
16 expression, liability for service in the Armed Forces of the United
17 States, nationality, or disability.

18 b. **【**Notwithstanding the provisions of section 12 of P.L.1945,
19 c.169 (C.10:5-13) any person claiming to be aggrieved by an
20 unlawful discrimination under this section shall enforce**】** The
21 provisions of subsection a. of this section shall be enforced by
22 【private right of】 an action in Superior Court pursuant to paragraph
23 (2) of subsection a. of section 12 of P.L.1945, c.169 (C.10:5-13).
24 This **【section】** subsection shall not apply to discrimination in
25 housing owned or managed by a municipality, county, or other local
26 civil or political subdivision of the State of New Jersey where such
27 discrimination is otherwise prohibited by section 11 of P.L.1945,
28 c.169 (C.10:5-12).

29 (cf: P.L.2017, c.184, s.4)

30

31 2. Section 12 of P.L.1945, c.169 (C.10:5-13) is amended to
32 read as follows:

33 12. a. (1) Any person claiming to be aggrieved by an unlawful
34 employment practice or an unlawful discrimination may, personally
35 or by an attorney-at-law, make, sign, and file with the division a
36 verified complaint in writing which shall state the name and address
37 of the person, employer, labor organization, employment agency,
38 owner, lessee, proprietor, manager, superintendent, or agent alleged
39 to have committed the unlawful employment practice or unlawful
40 discrimination complained of and which shall set forth the
41 particulars thereof and shall contain such other information as may
42 be required by the division. Upon receipt of the complaint, the
43 division shall notify the complainant on a form promulgated by the
44 director of the division and approved by the Attorney General of 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.

1 complainant's rights under **【this act】** P.L.1945, c.169 (C.10:5-
2 1 et seq.), including the right to file a complaint in the Superior
3 Court to be heard before a jury; of the jurisdictional limitations of
4 the division; and any other provisions of **【this act】** P.L.1945, c.169
5 (C.10:5-1 et seq.), without interpretation, that may apply to the
6 complaint. The Commissioner of Labor and Workforce
7 Development, the Attorney General, or the Commissioner of
8 Education may, in like manner, make, sign, and file such complaint.
9 Any employer whose employees, or some of them, refuse, or
10 threaten to refuse to **【co-operate】** cooperate with the provisions of
11 **【this act】** P.L.1945, c.169 (C.10:5-1 et seq.), may file with the
12 division a verified complaint asking for assistance by conciliation
13 or other remedial action.

14 (2) (a) Any complainant, the Attorney General, or the director
15 may initiate suit in Superior Court under **【this act】** P.L.1945, c.169
16 (C.10:5-1 et seq.) without first filing a complaint with the division
17 or any municipal office.

18 (b) Upon the application of any party, a jury trial shall be
19 directed to try the validity of any claim under **【this act】** P.L.1945,
20 c.169 (C.10:5-1 et seq.) specified in the suit.

21 (c) All remedies available in common law tort actions shall be
22 available to prevailing plaintiffs, and if the Attorney General or the
23 director is a prevailing plaintiff, those remedies shall be available
24 on behalf of named or unnamed victims. The injunctive relief set
25 forth in section 16 of P.L.1945, c.169 (C.10:5-17) shall also be
26 available to prevailing plaintiffs. These remedies are in addition to
27 any other provided by **【this act】** P.L.1945, c.169 (C.10:5-1 et seq.)
28 or any other statute.

29 (d) In addition to the remedies set forth in subparagraph (c) of
30 this paragraph, the Attorney General or director may seek and
31 obtain from the Superior Court penalties pursuant to section 2 of
32 P.L.1983, c.412 (C.10:5-14.1a). In the alternative, in lieu of these
33 penalties, the Attorney General or director may seek and obtain
34 punitive damages payable to the State upon a finding of an unlawful
35 discrimination or an unlawful employment practice and that the
36 provisions of P.L.1995, c.142 (C.2A:15-5.9 et al.) are satisfied.

37 (e) Prosecution of such suit in Superior Court under **【this act】**
38 P.L.1945, c.169 (C.10:5-1 et seq.) shall bar the filing of a complaint
39 with the division or any municipal office during the pendency of
40 any such suit.

41 (f) If a jury determines that an employer is guilty of an unlawful
42 employment practice prohibited by subsection r. or t. of section 11
43 of P.L.1945, c.169 (C.10:5-12), the judge shall award three times
44 any monetary damages to the person or persons aggrieved by the
45 violation.

46 (g) Notwithstanding the provisions of section 6 of P.L.1979,
47 c.404 (C.10:5-27.1), if the Attorney General or the director is a

1 prevailing plaintiff, the court shall award reasonable attorney's fees
2 and litigation and investigation costs.

3 b. At any time after 180 days from the filing of a complaint
4 with the division, a complainant may file a request with the division
5 to present the action personally or through counsel to the Office of
6 Administrative Law. Upon such request, the director of the division
7 shall file the action with the Office of Administrative Law,
8 provided that no action may be filed with the Office of
9 Administrative Law where the director of the division has found
10 that no probable cause exists to credit the allegations of the
11 complaint or has otherwise dismissed the complaint.

12 c. A party to an action based upon a violation of **【this act】**
13 P.L.1945, c.169 (C.10:5-1 et seq.) shall mail a copy of the initial
14 pleadings or claims, amended pleadings or claims, counterclaims,
15 briefs, and legal memoranda to the division at the same time as
16 filing such documents with the Office of Administrative Law or the
17 court. Upon application to the Office of Administrative Law or to
18 the court wherein the matter is pending, the division shall be
19 permitted to intervene.

20 (cf: P.L.2018, c.9, s.3)

21
22 3. Section 2 of P.L.1983, c.412 (C.10:5-14.1a) is amended to
23 read as follows:

24 2. Any person who violates any of the provisions of the "Law
25 Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.), shall,
26 in addition to any other relief or affirmative action provided by law,
27 be liable for the following penalties:

28 a. In an amount not exceeding \$10,000 if the respondent has
29 not been adjudged to have committed any prior violation within the
30 five-year period ending on the date of the filing of this charge;

31 b. In an amount not exceeding \$25,000 if the respondent has
32 been adjudged to have committed one other violation within the
33 five-year period ending on the date of the filing of this charge; and

34 c. In an amount not exceeding \$50,000 if the respondent has
35 been adjudged to have committed two or more violations within the
36 seven-year period ending on the date of the filing of this charge.

37 The penalties shall be determined by the director or the Superior
38 Court, as applicable, in such amounts as **【he】** the director or court
39 deems proper under the circumstances and included in 【his】 an
40 order following 【his】 a finding of an unlawful discrimination or an
41 unlawful employment practice pursuant to section 16 of P.L.1945,
42 c.169 (C.10:5-17). Any such amounts collected by the director or
43 awarded by a court shall be paid forthwith into the State Treasury
44 for the general purposes of the State.

45 (cf: P.L.2001, c.254, s.1)

46
47 4. This act shall take effect immediately.

STATEMENT

This bill would reaffirm and clarify that the Attorney General and the Director of the Division on Civil Rights (director) may initiate actions in the Superior Court to enforce the provisions of the “Law Against Discrimination” (LAD). The bill would enhance the ability of the Attorney General and the director to take proactive steps to enforce and protect the civil rights of the State’s residents.

The bill also clarifies that the prevailing plaintiffs in a Superior Court action under the LAD may seek and obtain the same injunctive relief that the director may award in an administrative proceeding under that law. Additionally, the bill clarifies that in such a Superior Court action, the Attorney General or director may seek and obtain certain penalties authorized under the LAD. In the alternative, in lieu of these penalties, the bill provides that the Attorney General or director may seek and obtain punitive damages.

The bill also makes the award of attorney’s fees, litigation costs, and investigation costs mandatory in Superior Court actions under the LAD if the Attorney General or the director is the prevailing plaintiff. Under current law, any prevailing party in a LAD action may be awarded, but is not ensured, a reasonable attorney’s fee.

The bill also revises the provision of the LAD authorizing Superior Court actions against local governments for discriminatory land use or housing regulations to reflect the possibility that those actions may be brought by the Attorney General or the director. Lastly, the bill revises the provision of the LAD authorizing the award of certain penalties to reflect the possibility that those penalties may be awarded by the Superior Court.