

SENATE, No. 1566

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator CHRISTOPHER J. CONNORS

District 9 (Atlantic, Burlington and Ocean)

SYNOPSIS

Clarifies that punitive damages may not be awarded against public entities or public employees acting within the scope of their employment in any action.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning awarding punitive damages and amending
2 P.L.1995, c.142, P.L.1945, c.169, P.L.1986, c.105, and
3 N.J.S.59:9-2.

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

7
8 1. Section 5 of P.L.1995, c.142 (C.2A:15-5.13) is amended to
9 read as follows:

10 5. a. Any actions involving punitive damages shall, if
11 requested by any defendant, be conducted in a bifurcated trial.

12 b. In the first stage of a bifurcated trial, the trier of fact shall
13 determine liability for compensatory damages and the amount of
14 compensatory damages or nominal damages. Evidence relevant
15 only to the issues of punitive damages shall not be admissible in
16 this stage.

17 c. Punitive damages may be awarded only if compensatory
18 damages have been awarded in the first stage of the trial. An award
19 of nominal damages cannot support an award of punitive damages.

20 d. In the second stage of a bifurcated trial, the trier of fact shall
21 determine if a defendant is liable for punitive damages.

22 e. In any action in which there are two or more defendants, an
23 award of punitive damages must be specific as to a defendant, and
24 each defendant is liable only for the amount of the award made
25 against that defendant.

26 f. No public entity is liable for punitive damages. No public
27 employee acting within the scope of his employment is liable for
28 punitive damages. For purposes of this section, "public entity"
29 means a public entity as defined in N.J.S.59:1-3 and "public
30 employee" means a public employee as defined in N.J.S.59:1-3.
31 (cf: P.L.1995, c.142, s.5)

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

35 12. Any person claiming to be aggrieved by an unlawful
36 employment practice or an unlawful discrimination may, personally
37 or by an attorney-at-law, make, sign and file with the division a
38 verified complaint in writing which shall state the name and address
39 of the person, employer, labor organization, employment agency,
40 owner, lessee, proprietor, manager, superintendent, or agent alleged
41 to have committed the unlawful employment practice or unlawful
42 discrimination complained of and which shall set forth the
43 particulars thereof and shall contain such other information as may
44 be required by the division. Upon receipt of the complaint, the
45 division shall notify the complainant on a form promulgated by 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 director of the division and approved by the Attorney General of the
2 complainant's rights under this act, including the right to file a
3 complaint in the Superior Court to be heard before a jury; of the
4 jurisdictional limitations of the division; and any other provisions of
5 this act, without interpretation, that may apply to the complaint. The
6 Commissioner of Labor and Workforce Development, the Attorney
7 General, or the Commissioner of Education may, in like manner,
8 make, sign and file such complaint. Any employer whose
9 employees, or some of them, refuse or threaten to refuse to co-
10 operate with the provisions of this act, may file with the division a
11 verified complaint asking for assistance by conciliation or other
12 remedial action.

13 Any complainant may initiate suit in Superior Court under this
14 act without first filing a complaint with the division or any
15 municipal office. Upon the application of any party, a jury trial
16 shall be directed to try the validity of any claim under this act
17 specified in the suit. All remedies available in common law tort
18 actions shall be available to prevailing plaintiffs except that
19 punitive damages shall not be awarded against public entities or
20 public employees acting within the scope of their employment as
21 provided in N.J.S.59:9-2. These remedies are in addition to any
22 provided by this act or any other statute. Prosecution of such suit in
23 Superior Court under this act shall bar the filing of a complaint with
24 the division or any municipal office during the pendency of any
25 such suit. If a jury determines that an employer is guilty of an
26 unlawful employment practice prohibited by subsection r. or t. of
27 section 11 of P.L.1945, c.169 (C.10:5-12), the judge shall award
28 three times any monetary damages to the person or persons
29 aggrieved by the violation.

30 At any time after 180 days from the filing of a complaint with
31 the division, a complainant may file a request with the division to
32 present the action personally or through counsel to the Office of
33 Administrative Law. Upon such request, the director of the division
34 shall file the action with the Office of Administrative Law,
35 provided that no action may be filed with the Office of
36 Administrative Law where the director of the division has found
37 that no probable cause exists to credit the allegations of the
38 complaint or has otherwise dismissed the complaint.

39 A party to an action based upon a violation of this act shall mail
40 a copy of the initial pleadings or claims, amended pleadings or
41 claims, counterclaims, briefs, and legal memoranda to the division
42 at the same time as filing such documents with the Office of
43 Administrative Law or the court. Upon application to the Office of
44 Administrative Law or to the court wherein the matter is pending,
45 the division shall be permitted to intervene.

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

1 3. Section 5 of P.L.1986, c.105 (C.34:19-5) is amended to read
2 as follows:

3 5. Upon a violation of any of the provisions of this act, an
4 aggrieved employee or former employee may, within one year,
5 institute a civil action in a court of competent jurisdiction. Upon
6 the application of any party, a jury trial shall be directed to try the
7 validity of any claim under this act specified in the suit. All
8 remedies available in common law tort actions shall be available to
9 prevailing plaintiffs except that punitive damages shall not be
10 awarded against public entities or public employees acting within
11 the scope of their employment as provided in N.J.S.59:9-2. These
12 remedies are in addition to any legal or equitable relief provided by
13 this act or any other statute. The court shall also order, where
14 appropriate and to the fullest extent possible:

- 15 a. An injunction to restrain any violation of this act which is
16 continuing at the time that the court issues its order;
17 b. The reinstatement of the employee to the same position held
18 before the retaliatory action, or to an equivalent position;
19 c. The reinstatement of full fringe benefits and seniority rights;
20 d. The compensation for all lost wages, benefits and other
21 remuneration; and
22 e. The payment by the employer of reasonable costs, and
23 attorney's fees.

24 In addition, the court or jury may order: the assessment of a civil
25 fine of not more than \$10,000 for the first violation of the act and
26 not more than \$20,000 for each subsequent violation, which shall be
27 paid to the State Treasurer for deposit in the General Fund; punitive
28 damages except against public entities or public employees acting
29 within the scope of their employment as provided in N.J.S.59:9-2;
30 or both a civil fine and punitive damages. In determining the
31 amount of punitive damages, the court or jury shall consider not
32 only the amount of compensatory damages awarded to the
33 employee, but also the amount of all damages caused to
34 shareholders, investors, clients, patients, customers, employees,
35 former employees, retirees or pensioners of the employer, or to the
36 public or any governmental entity, by the activities, policies or
37 practices of the employer which the employee disclosed, threatened
38 to disclose, provided testimony regarding, objected to, or refused to
39 participate in.

40 (cf: P.L.2005, c.329, s.2)

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42 4. N.J.S.59:9-2 is amended to read as follows:

43 59:9-2. a. No interest shall accrue prior to the entry of
44 judgment against a public entity or public employee.

45 b. No judgment shall be granted against a public entity or
46 public employee on the basis of strict liability, implied warranty or
47 products liability.

48 c. No punitive or exemplary damages shall be awarded against

1 a public entity or public employee acting within the scope of his
2 employment in any action regardless of the applicability of other
3 remedies available in common law or pursuant to statutory law,
4 including, but not limited to, any actions under the "Law Against
5 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) and the
6 "Conscientious Employee Protection Act," P.L.1986, c.105
7 (C.34:19-1 et seq.).

8 d. No damages shall be awarded against a public entity or
9 public employee for pain and suffering resulting from any injury;
10 provided, however, that this limitation on the recovery of damages
11 for pain and suffering shall not apply in cases of permanent loss of
12 a bodily function, permanent disfigurement or dismemberment
13 where the medical treatment expenses are in excess of \$3,600.00.
14 For purposes of this section medical treatment expenses are defined
15 as the reasonable value of services rendered for necessary surgical,
16 medical and dental treatment of the claimant for such injury,
17 sickness or disease, including prosthetic devices and ambulance,
18 hospital or professional nursing service.

19 e. If a claimant receives or is entitled to receive benefits for the
20 injuries allegedly incurred from a policy or policies of insurance or
21 any other source other than a joint tortfeasor, such benefits shall be
22 disclosed to the court and the amount thereof which duplicates any
23 benefit contained in the award shall be deducted from any award
24 against a public entity or public employee recovered by such
25 claimant; provided, however, that nothing in this provision shall be
26 construed to limit the rights of a beneficiary under a life insurance
27 policy. No insurer or other person shall be entitled to bring an
28 action under a subrogation provision in an insurance contract
29 against a public entity or public employee.

30 (cf: P.L.2000, c.126, s.32)

31
32 5. This act shall take effect immediately and shall apply to
33 causes of action pending or filed on or after the effective date.
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36 STATEMENT

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38 This bill amends the "New Jersey Tort Claims Act," N.J.S.59:1-1
39 et seq., to clarify that the legislative intent of the prohibition against
40 the awarding of punitive damages against either a public entity or
41 public employee, acting within the scope of his employment,
42 applies in every action, regardless of the applicability of other
43 remedies available in common law or pursuant to other statutory
44 law. The bill specifically mentions the "Law Against
45 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) (hereafter,
46 LAD), and the "Conscientious Employee Protection Act,"
47 P.L.1986, c.105 (C.34:19-1 et seq.) (hereafter, CEPA), since a court

1 decision previously held to the contrary regarding these two
2 enactments. See Abbamont v. Piscataway Township Bd. of Educ.,
3 138 N.J. 405 (1994).

4 The bill also amends section 5 of P.L.1995, c.142 (C:2A:15-
5 5.13) concerning punitive damages generally, and the specific
6 sections of the LAD and CEPA that provide prevailing plaintiffs in
7 these statutory-based actions “all remedies [also] available in
8 common law tort,” to clarify that such remedies do not include
9 punitive damages against public entities or public employees acting
10 within the scope of their employment.

11 This bill would not permit the awarding of punitive damages on
12 the grounds that, ultimately, it is the local taxpayer who will bear
13 these litigation costs. The sponsor believes that the reasons for
14 awarding punitive damages generally do not outweigh the public
15 policy considerations of financially burdening citizens at large
16 when a public entity or public employee, acting within the scope of
17 his employment, is involved.