

SENATE, No. 1919

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator CARMEN F. AMATO, JR.

District 9 (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

Introduced Pending Technical Review by Legislative Counsel.



S1919 AMATO

2

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

13 (2) Any complainant, including any person claiming to be
14 aggrieved by an unlawful employment practice or an unlawful
15 discrimination, the Attorney General, the director, the
16 Commissioner of Labor and Workforce Development, or the
17 Commissioner of Education, may initiate suit in Superior Court
18 under P.L.1945, c.169 (C.10:5-1 et seq.) without first filing a
19 complaint with the division or any municipal office. In such
20 proceedings:

21 (a) Upon the application of any party, a jury trial shall be
22 directed to try the validity of any claim under P.L.1945, c.169
23 (C.10:5-1 et seq.) specified in the suit.

24 (b) All remedies available in common law tort actions shall be
25 available to prevailing plaintiffs, except that punitive damages shall
26 not be awarded against public entities or public employees acting
27 within the scope of their employment as provided in N.J.S.59:9-2,
28 and if the Attorney General or the director is a prevailing plaintiff,
29 those remedies shall be available on behalf of named or unnamed
30 victims. If the suit seeks relief for one or more unnamed members
31 of a protected class, the Attorney General or the director shall have
32 the discretion to settle the suit on such terms as the Attorney
33 General or the director deems appropriate. The injunctive relief set
34 forth in section 16 of P.L.1945, c.169 (C.10:5-17) shall also be
35 available to prevailing plaintiffs. These remedies are in addition to
36 any other provided by P.L.1945, c.169 (C.10:5-1 et seq.) or any
37 other statute.

38 (c) In addition to the remedies set forth in subparagraph (b) of
39 this paragraph, the Attorney General or director may seek and
40 obtain from the Superior Court penalties pursuant to section 2 of
41 P.L.1983, c.412 (C.10:5-14.1a). In the alternative, in lieu of these
42 penalties, the Attorney General or director may seek and obtain
43 punitive damages payable to the State upon a finding that the
44 provisions of P.L.1995, c.142 (C.2A:15-5.9 et al.) are satisfied.

45 Prosecution of such suit in Superior Court under P.L.1945, c.169
46 (C.10:5-1 et seq.) shall bar the filing of a complaint with the
47 division or any municipal office during the pendency of any such
48 suit.

S1919 AMATO

1 (d) If a jury or court determines that an employer has committed
2 an unlawful employment practice prohibited by subsection r. or t. of
3 section 11 of P.L.1945, c.169 (C.10:5-12), the judge shall award
4 three times any monetary damages to the person or persons
5 aggrieved by the violation.

6 (e) Notwithstanding the provisions of section 6 of P.L.1979,
7 c.404 (C.10:5-27.1), if the Attorney General or the director is a
8 prevailing plaintiff, the court shall award reasonable attorney's fees
9 and litigation and investigation costs.

10 b. At any time after 180 days from the filing of a complaint
11 with the division, a complainant may file a request with the division
12 to present the action personally or through counsel to the Office of
13 Administrative Law. Upon such request, the director of the division
14 shall file the action with the Office of Administrative Law,
15 provided that no action may be filed with the Office of
16 Administrative Law where the director of the division has found
17 that no probable cause exists to credit the allegations of the
18 complaint or has otherwise dismissed the complaint.

19 c. A party to an action based upon a violation of P.L.1945,
20 c.169 (C.10:5-1 et seq.) shall mail a copy of the initial pleadings or
21 claims, amended pleadings or claims, counterclaims, briefs, and
22 legal memoranda to the division at the same time as filing such
23 documents with the Office of Administrative Law or the court.
24 Upon application to the Office of Administrative Law or to the
25 court wherein the matter is pending, the division shall be permitted
26 to intervene.

27 (cf: P.L.2019, c.436, s.5)

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

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

43 a. An injunction to restrain any violation of this act which is
44 continuing at the time that the court issues its order;

45 b. The reinstatement of the employee to the same position held
46 before the retaliatory action, or to an equivalent position;

47 c. The reinstatement of full fringe benefits and seniority rights;

48 d. The compensation for all lost wages, benefits and other

1 remuneration; and

2 e. The payment by the employer of reasonable costs, and
3 attorney's fees.

4 In addition, the court or jury may order: the assessment of a civil
5 fine of not more than \$10,000 for the first violation of the act and
6 not more than \$20,000 for each subsequent violation, which shall be
7 paid to the State Treasurer for deposit in the General Fund; punitive
8 damages except against public entities or public employees acting
9 within the scope of their employment as provided in N.J.S.59:9-2;
10 or both a civil fine and punitive damages. In determining the
11 amount of punitive damages, the court or jury shall consider not
12 only the amount of compensatory damages awarded to the
13 employee, but also the amount of all damages caused to
14 shareholders, investors, clients, patients, customers, employees,
15 former employees, retirees or pensioners of the employer, or to the
16 public or any governmental entity, by the activities, policies or
17 practices of the employer which the employee disclosed, threatened
18 to disclose, provided testimony regarding, objected to, or refused to
19 participate in.

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

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

23 59:9-2. a. No interest shall accrue prior to the entry of
24 judgment against a public entity or public employee.

25 b. No judgment shall be granted against a public entity or
26 public employee on the basis of strict liability, implied warranty or
27 products liability.

28 c. No punitive or exemplary damages shall be awarded against
29 a public entity or public employee acting within the scope of his
30 employment in any action regardless of the applicability of other
31 remedies available in common law or pursuant to statutory law,
32 including, but not limited to, any actions under the "Law Against
33 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) and the
34 "Conscientious Employee Protection Act," P.L.1986, c.105
35 (C.34:19-1 et seq.).

36 d. No damages shall be awarded against a public entity or
37 public employee for pain and suffering resulting from any injury;
38 provided, however, that this limitation on the recovery of damages
39 for pain and suffering shall not apply in cases of permanent loss of
40 a bodily function, permanent disfigurement or dismemberment
41 where the medical treatment expenses are in excess of \$3,600.00.
42 For purposes of this section medical treatment expenses are defined
43 as the reasonable value of services rendered for necessary surgical,
44 medical and dental treatment of the claimant for such injury,
45 sickness or disease, including prosthetic devices and ambulance,
46 hospital or professional nursing service.

47 e. If a claimant receives or is entitled to receive benefits for the
48 injuries allegedly incurred from a policy or policies of insurance or

1 any other source other than a joint tortfeasor, such benefits shall be
2 disclosed to the court and the amount thereof which duplicates any
3 benefit contained in the award shall be deducted from any award
4 against a public entity or public employee recovered by such
5 claimant; provided, however, that nothing in this provision shall be
6 construed to limit the rights of a beneficiary under a life insurance
7 policy. No insurer or other person shall be entitled to bring an
8 action under a subrogation provision in an insurance contract
9 against a public entity or public employee.
10 (cf: P.L.2000, c.126, s.32)

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12 5. This act shall take effect immediately and shall apply to
13 causes of action pending or filed on or after the effective date.

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STATEMENT

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18 This bill amends the “New Jersey Tort Claims Act,” N.J.S.59:1-1
19 et seq., to clarify that the legislative intent of the prohibition against
20 the awarding of punitive damages against either a public entity or
21 public employee, acting within the scope of his employment,
22 applies in every action, regardless of the applicability of other
23 remedies available in common law or pursuant to other statutory
24 law. The bill specifically mentions the “Law Against
25 Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) (hereafter,
26 LAD), and the “Conscientious Employee Protection Act,”
27 P.L.1986, c.105 (C.34:19-1 et seq.) (hereafter, CEPA), since a court
28 decision previously held to the contrary regarding these two
29 enactments. See Abbamont v. Piscataway Township Bd. of Educ.,
30 138 N.J. 405 (1994).

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

38 This bill would not permit the awarding of punitive damages on
39 the grounds that, ultimately, it is the local taxpayer who will bear
40 these litigation costs. The sponsor believes that the reasons for
41 awarding punitive damages generally do not outweigh the public
42 policy considerations of financially burdening citizens at large
43 when a public entity or public employee, acting within the scope of
44 his employment, is involved.