

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"N.J. employers can't exclude unemployed," The Press of Atlantic City, 4-25-11, p.C4.

"Firm fined for Job ad that excluded jobless Company broke state law by stating applicant 'must be currently Employed,'" Star Ledger, 11-13-11, p. 17

LAW/RWH

Title 34.
Chapter 8B.(New)
Employment
Advertisements.
§§1-2 - C.34:8B-1
to 34:8B-2
§3 - Note

P.L.2011, CHAPTER 40, *approved March 29, 2011*
Assembly, No. 3359 (*First Reprint*)

1 AN ACT concerning employment discrimination and supplementing
2 Title 34 of the Revised Statutes.

3

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

6

7 1. **[No]** Unless otherwise permitted by the provisions of Title
8 11A of the New Jersey Statutes or any other law, rule or regulation,
9 no¹ employer or employer's agent, representative, or designee shall
10 'knowingly or purposefully' publish, in print or on the Internet, an
11 advertisement for any job vacancy 'in this State' that contains one
12 or more of the following:

13 a. Any provision stating **'[or suggesting]'** that the
14 qualifications for a job include current employment;

15 b. Any provision stating **'[or suggesting]'** that the employer or
16 employer's agent, representative, or designee will not consider or
17 review an application for employment submitted by any job
18 applicant currently unemployed; or

19 c. Any provision stating **'[or suggesting]'** that the employer or
20 employer's agent, representative, or designee will only consider or
21 review applications for employment submitted by job applicants
22 who are currently employed.

23 'Nothing set forth in this section shall be construed as
24 prohibiting an employer or employer's agent, representative, or
25 designee from publishing, in print or on the Internet, an
26 advertisement for any job vacancy in this State that contains any
27 provision setting forth any other qualifications for a job, as
28 permitted by law, including, but not limited to, the holding of a
29 current and valid professional or occupational license, certificate,
30 registration, permit or other credential, or a minimum level of
31 education, training or professional, occupational or field experience.

32 In addition, nothing set forth in this section shall be construed as
33 prohibiting an employer or employer's agent, representative, or

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly amendments adopted in accordance with Governor's recommendations February 17, 2011.

1 designee from publishing, in print or on the Internet, an
2 advertisement for any job vacancy that contains any provision
3 stating that only applicants who are currently employed by such
4 employer will be considered.¹

5
6 2. 'a.'¹ Any employer who violates this act shall be subject to a
7 civil penalty in an amount not to exceed ~~'[\$5,000]~~ \$1,000¹ for the
8 first violation ¹, \$5,000 for the second violation¹ and \$10,000 for
9 each subsequent violation, collectible by the Commissioner of
10 Labor and Workforce Development in a summary proceeding
11 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
12 c.274 (C.2A:58-10 et seq.).

13 'b. Nothing set forth in this act shall be construed as creating,
14 establishing or authorizing a private cause of action by an aggrieved
15 person against an employer who has violated, or is alleged to have
16 violated, the provisions of this act.¹

17
18 3. This act shall take effect ~~'[immediately]~~ on the first day of
19 the third month following enactment¹.

20
21
22 _____
23
24 Prohibits practice of excluding unemployed individuals in
25 advertisements for job vacancies.

ASSEMBLY, No. 3359

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED OCTOBER 7, 2010

Sponsored by:

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

Assemblywoman CELESTE M. RILEY

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

**Assemblymen DeAngelo, O'Donnell, Assemblywoman Tucker, Senators
Beach, Madden and Cunningham**

SYNOPSIS

Prohibits practice of excluding unemployed individuals in advertisements for job vacancies.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/23/2010)

1 AN ACT concerning employment discrimination and supplementing
2 Title 34 of the Revised Statutes.

3

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

6

7 1. No employer or employer's agent, representative, or
8 designee shall publish, in print or on the Internet, an advertisement
9 for any job vacancy that contains one or more of the following:

10 a. Any provision stating or suggesting that the qualifications
11 for a job include current employment;

12 b. Any provision stating or suggesting that the employer or
13 employer's agent, representative, or designee will not consider or
14 review an application for employment submitted by any job
15 applicant currently unemployed; or

16 c. Any provision stating or suggesting that the employer or
17 employer's agent, representative, or designee will only consider or
18 review applications for employment submitted by job applicants
19 who are currently employed.

20

21 2. Any employer who violates this act shall be subject to a civil
22 penalty in an amount not to exceed \$5,000 for the first violation and
23 \$10,000 for each subsequent violation, collectible by the
24 Commissioner of Labor and Workforce Development in a summary
25 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
26 P.L.1999, c.274 (C.2A:58-10 et seq.).

27

28 3. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 This bill prohibits an employer or employer's agent,
34 representative, or designee to publish, in print or on the Internet, an
35 advertisement for any job vacancy that prohibits, announces or
36 suggests that unemployed individuals need not apply for a job
37 vacancy. The bill provides for the imposition of civil penalties, for a
38 violation of the bill, in an amount not to exceed \$5,000 for the first
39 violation, or \$10,000 for each subsequent violation, collectible by
40 the Commissioner of Labor and Workforce Development.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3359

STATE OF NEW JERSEY

DATED: OCTOBER 14, 2010

The Assembly Labor Committee reports favorably Assembly Bill No. 3359.

This bill prohibits an employer or employer's agent, representative, or designee to publish, in print or on the Internet, an advertisement for any job vacancy that prohibits, announces or suggests that unemployed individuals need not apply for a job vacancy. The bill provides for the imposition of civil penalties, for a violation of the bill, in an amount not to exceed \$5,000 for the first violation, or \$10,000 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development.

SENATE LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3359

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 2010

The Senate Labor Committee reports favorably Assembly Bill No. 3359.

This bill prohibits an employer or employer's agent, representative, or designee to publish, in print or on the Internet, an advertisement for any job vacancy that states or suggests that unemployed individuals need not apply for a job vacancy. The bill provides for the imposition of civil penalties for a violation of the bill, in an amount not to exceed \$5,000 for the first violation, or \$10,000 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development.

This bill is identical to Senate Bill No. 2388 which was also reported by the committee today.

SENATE, No. 2388

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED NOVEMBER 8, 2010

Sponsored by:

Senator JAMES BEACH

District 6 (Camden)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Co-Sponsored by:

Senator Cunningham

SYNOPSIS

Prohibits practice of excluding unemployed individuals in advertisements for job vacancies.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/16/2010)

1 AN ACT concerning employment discrimination and supplementing
2 Title 34 of the Revised Statutes.

3

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

6

7 1. No employer or employer's agent, representative, or
8 designee shall publish, in print or on the Internet, an advertisement
9 for any job vacancy that contains one or more of the following:

10 a. Any provision stating or suggesting that the qualifications
11 for a job include current employment;

12 b. Any provision stating or suggesting that the employer or
13 employer's agent, representative, or designee will not consider or
14 review an application for employment submitted by any job
15 applicant currently unemployed; or

16 c. Any provision stating or suggesting that the employer or
17 employer's agent, representative, or designee will only consider or
18 review applications for employment submitted by job applicants
19 who are currently employed.

20

21 2. Any employer who violates this act shall be subject to a civil
22 penalty in an amount not to exceed \$5,000 for the first violation and
23 \$10,000 for each subsequent violation, collectible by the
24 Commissioner of Labor and Workforce Development in a summary
25 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
26 P.L.1999, c.274 (C.2A:58-10 et seq.).

27

28 3. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 This bill prohibits an employer or employer's agent,
34 representative, or designee to publish, in print or on the Internet, an
35 advertisement for any job vacancy that prohibits, announces or
36 suggests that unemployed individuals need not apply for a job
37 vacancy. The bill provides for the imposition of civil penalties, for a
38 violation of the bill, in an amount not to exceed \$5,000 for the first
39 violation, or \$10,000 for each subsequent violation, collectible by
40 the Commissioner of Labor and Workforce Development.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2388

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 2010

The Senate Labor Committee reports favorably Senate Bill No. 2388.

This bill prohibits an employer or employer's agent, representative, or designee to publish, in print or on the Internet, an advertisement for any job vacancy that states or suggests that unemployed individuals need not apply for a job vacancy. The bill provides for the imposition of civil penalties for a violation of the bill, in an amount not to exceed \$5,000 for the first violation, or \$10,000 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development.

This bill is identical to Assembly Bill No. 3359 which was also reported by the committee today.

ASSEMBLY BILL NO. 3359

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 3359 with my recommendations for reconsideration.

This bill would prohibit an employer or an employer's agent, representative, or designee from publishing, in print or on the Internet, an advertisement for any job vacancy that states or suggests that an unemployed person will not be considered for the position. The legislation also provides that an employer who violates the bill's provisions will be subject to a civil penalty of \$5,000 for a first offense and \$10,000 for each subsequent offense, with such penalties being enforced and collected by the Commissioner of Labor and Workforce Development.

While I share the sponsors' interest in removing barriers to employment for people who are actively seeking work, I believe that the bill, as currently drafted, is vague and confusing. Accordingly, I am concerned that the bill will subject the State's already beleaguered business community to significant fines, penalties and unwarranted litigation without requiring a finding of knowing and purposeful conduct on the part of the employer. In addition, the bill's provisions may conflict with existing State laws, rules, and regulations concerning civil service promotions and appointments, and may unnecessarily prevent employers from examining their current pool of employees when seeking to fill vacancies.

Specifically, I am concerned that the bill's restrictions preventing employers from "suggesting" in a job advertisement that they will not hire an unemployed individual are too vague

to provide employers with proper notice of their obligations under the law. The bill provides no definitions, and absolutely no guidance on what constitutes a "suggestion" triggering substantial penalties. This lack of clarity will lead to unwarranted penalties, frivolous litigation and widespread confusion for businesses.

In addition, I am also troubled by the legislation's imposition of new, significant financial penalties for New Jersey's already over-regulated business community without a specific intent standard established in the bill. Historically, New Jersey has suffered from a well-deserved reputation as an unfriendly environment for businesses of all sizes. Moreover, according to the final report of the Transition Subcommittee for the Department of Labor and Workforce Development issued on January 22, 2010, the Department has previously suffered from the perception that it has been overly punitive towards employers. Here, the severity of the penalties established in the bill are disproportionate to the offenses proscribed in the legislation. In order to address these harms, I believe that penalties should only be imposed after a determination that a violation was "knowingly or purposefully" committed, and that the penalty provisions should be adjusted to better address first-time offenses. Likewise, while I believe the intent of the sponsors was to create an administrative penalty as the sole remedy for violations of the bill's provisions, I am concerned that the legislation will unintentionally expose employers to costly, unwarranted litigation by failing to expressly provide that a new, private civil cause of action has not been created.

Additionally, I have been advised by the Chair of the Civil Service Commission that the bill's provisions likely conflict with existing civil service laws, rules and regulations and may

subject appointing authorities to the penalties set forth in the legislation. Specifically, N.J.S.A. 11A:4-2 provides for the filling of employment vacancies under certain circumstances through promotional examinations. Since promotional lists only include current permanent civil service employees, unemployed individuals would not be eligible to apply. As such, without an explicit exemption for civil service jurisdictions, the job announcement for a promotional opportunity would run afoul of the prohibitions set forth in the bill and an appointing authority that posts the advertisement would be subject to the civil penalties established in the legislation.

Finally, I am recommending that the effective date of this legislation be delayed until the first day of the third month following enactment in order to provide the Department of Labor and Workforce Development with sufficient time to prepare for its implementation.

Accordingly, I herewith return Assembly Bill No. 3359 and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 7:</u>	Delete "No" and insert "Unless otherwise permitted by the provisions of Title 11A of the Revised Statutes or any other law, rule or regulation, no"
<u>Page 2, Section 1, Line 8:</u>	After "shall" insert "knowingly or purposefully"
<u>Page 2, Section 1, Line 9:</u>	After "vacancy" insert "in this State"
<u>Page 2, Section 1, Line 10:</u>	Delete "or suggesting"
<u>Page 2, Section 1, Line 12:</u>	Delete "or suggesting"
<u>Page 2, Section 1, Lines 16:</u>	Delete "or suggesting"
<u>Page 2, Section 1, Line 20:</u>	Insert "Nothing set forth in this section shall be construed as prohibiting an employer or employer's agent, representative, or designee from publishing, in print or on the Internet, an advertisement for any job vacancy in this State that contains any

provision setting forth any other qualifications for a job, as permitted by law, including, but not limited to, the holding of a current and valid professional or occupational license, certificate, registration, permit or other credential, or a minimum level of education, training or professional, occupational or field experience.

In addition, nothing set forth in this section shall be construed as prohibiting an employer or employer's agent, representative, or designee from publishing, in print or on the Internet, an advertisement for any job vacancy that contains any provision stating that only applicants who are currently employed by such employer will be considered."

Page 1, Section 2, Line 21:

After "2." Insert "a."

Page 1, Section 2, Line 22:

Delete "\$5,000" and insert "\$1,000"

Page 1, Section 2, Line 22:

After "violation" insert ", \$5,000 for the second violation"

Page 1, Section 2, Line 27:

Insert "b. Nothing set forth in this act shall be construed as creating, establishing or authorizing a private cause of action by an aggrieved person against an employer who has violated, or is alleged to have violated, the provisions of this act."

Page 1, Section 3, Line 28:

Delete "immediately" and
insert "on the first day of
the third month following
enactment"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor