

10:5-13 et al

LEGISLATIVE HISTORY CHECKLIST

WJSA 10:5-13 et al. ("Law Against Discrimination"--amend procedural provisions)

LAWS OF 1979 CHAPTER 404

Bill No. S3101

Sponsor(s) Lipman and Herbert

Date Introduced Feb. 20, 1979

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Law, Public Safety and Defense

Amended during passage Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly Jan. 3, 1980

Senate Nov. 13, 1979

Date of approval Feb. 8, 1980

Following statements are attached if available:

Sponsor statement	Yes	<input checked="" type="checkbox"/>	Senate amendments adopted 9-10-79 (with statement) attached
Committee Statement: <u>Assembly</u>	Yes	<input checked="" type="checkbox"/>	
<u>Senate</u>	Yes	<input checked="" type="checkbox"/>	
Fiscal Note	Yes	No	
Veto message	Yes	No	
Message on signing	Yes	<input checked="" type="checkbox"/>	

Following were printed:

Reports	Yes	No
Hearings	Yes	No

DO NOT WRITE IN THESE SPACES

9/1/78
EO

2-8-80

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 3101

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 20, 1979

By Senators LIPMAN and HERBERT

Referred to Committee on Law, Public Safety and Defense

AN ACT to amend the "Law Against Discrimination," approved April 16, 1945 (P. L. 1945, c. 169) ****[and P. L. 1966, c. 17, s. 6]****.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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

3 12. Any person claiming to be aggrieved by an unlawful employ-
4 ment practice or an unlawful discrimination may, by himself, or
5 his attorney-at-law, make, sign and file with the ***[Attorney Gen-
6 eral]*** **division** a verified complaint in writing which shall state
7 the name and address of the person, employer, labor organization,
8 employment agency, owner, lessee, proprietor, manager, superin-
9 tendent, or agent alleged to have committed the unlawful employ-
10 ment practice or unlawful discrimination complained of and which
11 shall set forth the particulars thereof and shall contain such other
12 information as may be required by the ***[Attorney General]***
13 **division**. The Commissioner of Labor and Industry, the Attorney
14 General, or the Commissioner of Education may, in like manner,
15 make, sign and file such complaint. Any employer whose employees,
16 or some of them, refuse or threaten to refuse to co-operate with the
17 provisions of this act, may file with the ***[Attorney General]***
18 **division** a verified complaint asking for assistance by conciliation
18A or other remedial action.

19 *Any complainant may initiate suit in Superior Court under this*
20 *act without first filing a complaint with the ***[Attorney General]****
21 **division* or any municipal office. ****Prosecution of such suit in***
21A *Superior Court under this act shall bar the filing of a complaint*
21B *with the division or any municipal office during the pendency of*
21C *any such suit.***

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

22 **[At any time after the filing of a complaint whether with the*
 23 *Attorney General or with a municipal office, a complainant may*
 24 *demand a notice from the Attorney General, advising him of his*
 25 *right to institute suit upon his complaint in the Superior Court*
 26 *within 45 days after the receipt of a notice of right to sue.]**

27 **At any time after 180 days from the filing of a complaint****[*
 28 *whether with the division or with a municipal office, a complainant*
 29 *may demand a notice from the division, advising the complainant*
 30 *of the complainant's right to institute suit upon his complaint in*
 31 *the Superior Court within 90 days after the receipt of a notice of*
 32 *right to sue from the division]** **with the division, a complainant*
 33 *may file a request with the division to present the action by himself*
 34 *or through his own counsel to the Office of Administrative Law.*
 35 *Upon such request, the director of the division shall file the action*
 36 *with the Office of Administrative Law, provided that no action may*
 37 *be filed with the Office of Administrative Law where the director of*
 38 *the division has found that no probable cause exists to credit the*
 39 *allegations of the complaint or has otherwise dismissed the*
 40 *complaint.***

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

1 *****[2. Section 6 of P. L. 1966, c. 17 (C. 10:5-14.1) is amended to*
 2 *read as follows:*

3 6. At any time after the filing of any complaint, the Attorney
 4 General may proceed against any person in a summary manner in
 5 the Superior Court of New Jersey to compel compliance with any
 6 of the provisions of this act, or to prevent violations or attempts
 7 to violate any such provisions, or attempts to interfere with or
 8 impede the enforcement of any such provisions or the exercise or
 9 performance of any power or duty thereunder. *In any action or*
 10 *proceeding brought in Superior Court under this act, except for*
 11 *proceedings for temporary restraints, the court in its discretion*
 12 *may allow the prevailing party a reasonable attorney's fee as part*
 13 *of the cost, provided however, that no attorney's fee shall be*
 14 *awarded to the respondent unless there is a determination that*
 15 *the charge was brought in bad faith.]***

1 **[3.]** **2.** Section 15 of P. L. 1945, c. 169 (C. 10:5-16) is
2 amended to read as follows:

3 15. The case in support of the complaint shall be presented
4 before the director by the attorney for the division and evidence
5 concerning attempted conciliation shall not be received. The
6 respondent [may] *shall* file a written verified answer to the com-
7 plaint and appear at such hearing in person or by representative,
8 with or without counsel, and submit testimony. In the discretion
9 of the director, the complainant may be allowed to intervene and
10 present testimony in person and may be represented by counsel.
11 The director or the complainant shall have the power reasonably
12 and fairly to amend any complaint, and the respondent shall have
13 like power to amend his answer. The director shall not be bound
14 by the strict rules of evidence prevailing in civil actions in courts
15 of competent jurisdiction of this State. The testimony taken at the
16 hearing shall be under oath and be transcribed.

1 **[*4.]** **3.** Section 16 of P. L. 1945, c. 169 (C. 10:5-17) is
2 amended to read as follows:

3 16. If, upon all evidence at the hearing, the director shall find
4 that the respondent has engaged in any unlawful employment
5 practice or unlawful discrimination as defined in this act, the
6 director shall state his findings of fact and conclusions of law and
7 shall issue and cause to be served on such respondent an order
8 requiring such respondent to cease and desist from such unlawful
9 employment practice or unlawful discrimination and to take such
10 affirmative action, including, but not limited to, hiring, reinstatement
11 or upgrading of employees, with or without back pay, or
12 restoration to membership, in any respondent labor organization,
13 or extending full and equal accommodations, advantages, facilities,
14 and privileges to all persons, as, in the judgment of the director,
15 will effectuate the purpose of this act, and including a requirement
16 for report of the manner of compliance. If the conduct violative
17 of this act constitutes any form of unlawful economic discrimina-
18 tion prohibited in section 11, subsections l., m., and n. of this act,
19 the affirmative action taken by the director may include the award
20 of three-fold damages to the person or persons aggrieved by the
21 violation. The director shall have the power to use reasonably
22 certain bases, including but not limited to list, catalogue or market
23 prices or values, or contract or advertised terms and conditions,
24 in order to determine particulars or performance in giving ap-
25 propriate remedy. *In any case in which the director, Attorney*
26 *General, or appropriate organization is a complainant, on behalf*
27 *of unnamed individuals or a class of individuals, any of the*

28 *remedies or relief allowed by this act may be awarded or applied*
 29 *to the unnamed individual victims of discrimination.* If, upon all
 30 evidence, the director shall find that the respondent has not engaged
 31 in any such unlawful practice or unlawful discrimination, the
 32 director shall state his findings of fact and conclusions of law and
 33 shall issue and cause to be served on the complainant an order
 34 dismissing the said complaint as to such respondent.*

1 ***[4.]*** ****[*5.]**** **4.** Section 17 of P. L. 1945, c. 169 (C.
 2 10:5-18) is amended to read as follows:

3 17. The Attorney General shall establish rules of practice to
 4 govern, expedite and effectuate the foregoing procedure and his
 5 own actions thereunder. Any complaint filed *in the division or in*
 6 *any municipal office* pursuant to this **[section]** act must be so filed
 7 within 180 days after the alleged act of discrimination ****[became**
 8 *known or should have become known to the complainant]**.*

1 ***[5.]*** ****[*6.*]**** **5.** Section 23 of P. L. 1945, c. 169 (C.
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3 23. **[A copy of the transcript of the hearing shall be available**
 4 **at all reasonable times to all parties for examination without**
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6 *Any party may require that a transcript of a hearing be prepared*
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1 **6. *In any action or proceeding brought under this act, the pre-*
 2 *vailing party may be awarded a reasonable attorney's fee as part*
 3 *of the cost, provided however, that no attorney's fee shall be*
 4 *awarded to the respondent unless there is a determination that the*
 5 *charge was brought in bad faith.***

1 ***[6.]*** *7.* This act shall take effect immediately.

[ASSEMBLY REPRINT]
SENATE, No. 3101
[OFFICIAL COPY REPRINT]

with Assembly committee amendments adopted December 17, 1979

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INTRODUCED FEBRUARY 20, 1979

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17 provisions of this act, may file with the ***[Attorney General]***
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 29 may demand a notice from the division, advising the complainant
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 33 may file a request with the division to present the action by himself
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8 with or without counsel, and submit testimony. In the discretion
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4 before the director by the attorney for the division and evidence
5 concerning attempted conciliation shall not be received. The
6 respondent **[may]** *shall* file a written verified answer to the com-
7 plaint and appear at such hearing in person or by representative,
8 with or without counsel, and submit testimony. In the discretion
9 of the director, the complainant may be allowed to intervene and
10 present testimony in person and may be represented by counsel.
11 The director or the complainant shall have the power reasonably
12 and fairly to amend any complaint, and the respondent shall have
13 like power to amend his answer. The director shall not be bound
14 by the strict rules of evidence prevailing in civil actions in courts
15 of competent jurisdiction of this State. The testimony taken at the
16 hearing shall be under oath and be transcribed.

1 4. Section 17 of P. L. 1945, c. 169 (C. 10:5-18) is amended to read
2 as follows:

3 17. The Attorney General shall establish rules of practice to
4 govern, expedite and effectuate the foregoing procedure and his
5 own actions thereunder. Any complaint filed *in the division or in*
6 *any municipal office* pursuant to this **[section]** *act* must be so filed
7 within 180 days after the alleged act of discrimination *became*
8 *known or should have become known to the complainant.*

1 5. Section 23 of P. L. 1945, c. 169 (C. 10:5-24) is amended to read
2 as follows:

3 23. [A copy of the transcript of the hearing shall be available
4 at all reasonable times to all parties for examination without
5 cost.]

6 *Any party may require that a transcript of a hearing be prepared*
7 *at his cost.*

1 6. This act shall take effect immediately.

STATEMENT

This bill makes a number of amendments to the procedural provisions of the "Law Against Discrimination," P. L. 1945, c. 169.

Section 1 codifies court decisions which permit a complainant to initiate suit under the "Law Against Discrimination" without proceeding through the Division on Civil Rights. It also permits a complainant to remove his case from the Division if he wishes to pursue it privately. Section 2 confirms the procedural discretion of the Attorney General in investigating civil rights complaints. Section 3 follows the federal practice in encouraging the use of the judicial process to redress civil rights violations by allowing the award of attorneys' fees in certain circumstances. Section 4 amends the statute to require the filing of a verified answer to a complaint. Section 5 changes the time limit for the filing of a complaint. Section 6 eliminates the costly and unnecessary requirement that transcripts be prepared in all cases.

S. 3101 (1979)

SENATE LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
SENATE, No. 3101

STATE OF NEW JERSEY

DATED: AUGUST 6, 1979

This bill would permit complainants to initiate a suit alleging discrimination in Superior Court without the filing of a complaint with the Division of Civil Rights. If a complainant files with the division, this bill would permit him to remove his case and file in Superior Court within 45 days of receiving a notice of his right to do so from the Attorney General.

The bill would also allow for the award of reasonable attorney's fees to the prevailing party. Other amendments include a provision requiring the filing of verified answers to complaints and the appearance of a respondent or his representative at the hearing. It changes the time limit for filing of a complaint to 180 days after the alleged act becomes known to the complainant. Transcripts of hearings would be prepared only on request of a party and at his request.

SENATE AMENDMENTS TO
SENATE, No. 3101

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 10, 1979

Amend page 1, section 1, line 5, omit "Attorney General", insert "division".

Amend page 1, section 1, line 12, omit "Attorney General", insert "division".

Amend page 1, section 1, line 17, omit "Attorney General", insert "diivision".

Amend page 1, section 1, line 20, omit "Attorney General", insert "division".

Amend page 1, section 1, lines 22-26, omit.

Amend page 1, section 1, after line 26, insert:

"At any time after 180 days from the filing of a complaint, whether with the division or with a municipal office, a complainant may demand a notice from the division, advising the complainant of the complainant's right to institute suit upon his complaint in the Superior Court within 90 days after the receipt of a notice of right to sue from the division.

A party to an action in court based upon a violation of this act shall mail a copy of the initial pleadings or claims, amended pleadings or claims, counterclaims, briefs, and legal memoranda to the division at the same time as filing such documents with the court. Upon application to the court wherein the matter is pending, the division shall be permitted to intervene or to appear in any status appropriate to the matter."

Amend page 2, section 3, after line 16, insert a new section 4 as follows:

"4. Section 16 of P. L. 1945, c. 169 (C. 10:5-17) is amended to read as follows:

16. If, upon all evidence at the hearing, the director shall find that the respondent has engaged in any unlawful employment practice or unlawful discrimination as defined in this act, the director shall state his findings of fact and conclusions of law and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or unlawful discrimination and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or

without back pay, or restoration to membership, in any respondent labor organization, or extending full and equal accommodations, advantages, facilities, and privileges to all persons, as, in the judgment of the director, will effectuate the purpose of this act, and including a requirement for report of the manner of compliance. If the conduct violative of this act constitutes any form of unlawful economic discrimination prohibited in section 11, subsections l, m., and n. of this act, the affirmative action taken by the director may include the award of three-fold damages to the person or persons aggrieved by the violation. The director shall have the power to use reasonably certain bases, including but not limited to list, catalogue or market prices or values, or contract or advertised terms and conditions, in order to determine particulars or performance in giving appropriate remedy. *In any case in which the director, Attorney General, or appropriate organization is a complainant, on behalf of unnamed individuals or a class of individuals, any of the remedies or relief allowed by this act may be awarded or applied to the unnamed individual victims of discrimination.* If, upon all the evidence, the director shall find that the respondent has not engaged in any such unlawful practice or unlawful discrimination, the director shall state his findings of fact and conclusions of law and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent."

Amend pages 2 and 3, sections 4-6, line 1, renumber sections 4 through 6, as sections 5 through 7.

STATEMENT

These amendments change the time period after which a complainant may demand a notice of right to sue from the Division on Civil Rights, and make applicable to unnamed individual victims of discrimination the remedies and relief provided for under the "Law Against Discrimination".

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO

SENATE, No. 3101

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 17, 1979

This bill, as amended by the Assembly Judiciary, Law, Public Safety and Defense Committee, makes some procedural changes in the Law Against Discrimination.

The bill makes explicit the right of complainants to initiate a suit alleging discrimination in Superior Court without the filing of a complaint with the Division of Civil Rights. If such a suit is filed, the complainant may not also file with the division while the suit is pending. If a complainant files with the division, the bill permits him to accelerate his case by filing a request with the division to present the action to an administrative law judge. Unless the director finds there is no probable cause or has dismissed the complaint, the case must be accelerated.

The bill also allows for the award of reasonable attorney's fees to the prevailing party. Other amendments include a provision requiring the filing of verified answers to complaints and the appearance of a respondent or his representative at the hearing. Transcripts of hearings would be prepared only on request of a party and at his expense.

ASSEMBLY COMMITTEE AMENDMENTS TO

SENATE, No. 3101

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED DECEMBER 17, 1979

Amend page 1, title, line 2, omit "and P. L. 1966, c. 17, s. 6".

Amend page 1, section 1, line 21, after "office.", insert "Prosecution of such suit in Superior Court under this act shall bar the filing of a complaint with the division or any municipal office during the pendency of any such suit.".

Amend page 2, section 1, line 27, omit ",".

Amend page 2, section 1, lines 28-32, omit in entirety, insert: "With the division, a complainant may file a request with the division to present the action by himself or through his own counsel to the Office of Administrative Law. Upon such request, the director of the division shall file the action with the Office of Administrative Law, provided that no action may be filed with the Office of Administrative Law where the director of the division has found that no probable cause exists to credit the allegations of the complaint or has otherwise dismissed the complaint.".

Amend page 2, section 1, line 33, omit "in court".

Amend page 2, section 1, line 36, after "with", insert "the Office of Administrative Law or".

Amend page 2, section 1, line 37, after "application", insert "to the Office of Administrative Law or".

Amend page 2, section 1, lines 38-39, omit "or to appear in any status appropriate to the matter".

Amend page 2, section 2, lines 1-15, omit in entirety; renumber sections "3" through "6" as "2" through "5".

Amend page 3, section 5, lines 7-8, omit "became known or should have become known to the complainant".

Amend page 4, section 6, after line 7, insert new section 6 as follows:

"6. In any action or proceeding brought under this act, the prevailing party may be awarded a reasonable attorney's fee as part of the cost, provided however, that no attorney's fee shall be awarded to the respondent unless there is a determination that the charge was brought in bad faith.".

The bill also provides that the Director of the Division of Local Government Services establish rules and regulations for municipalities regarding notification of taxpayers, supervision by the tax collector and requirements concerning the holding, use, accounting, reporting and payment to the municipality of public money received by the designated banks or trust companies.

✓ S-3101, sponsored by Senator Wynona M. Lipman (D-Essex), which makes a number of changes in the "Law Against Discrimination" and is designed to reduce the backlog of cases and the costs in the Division of Civil Rights.

It brings New Jersey statutes into compliance with the federal law which currently permits charging parties to request the issuance of a right to sue letter after 180 days have expired and pursue their legal remedies before a court. Also, transcripts of hearings would be prepared only upon the request of a party and the prevailing party may be awarded reasonable attorney's fees.

S-3154, sponsored by Senator Walter E. Foran (R-Hunterdon), which directs the Department of Education to provide by September 30, 1982 sufficient in-service training to the child-study teams so they may properly evaluate and program handicapped children with severe hearing losses. Governor Byrne line-item vetoed a \$50,000 appropriation for the bill. A copy of the veto message is attached.

S-3183, sponsored by Senator William V. Musto (D-Hudson), which amends the definition of widow and widower for the purposes of the Police and Firemen's Retirement System.

Under prior law, in order to qualify for widows or widower's benefits, the person must have been married to the member for at least five years prior to the member's death. This bill reduces that requirement to two years.

S-3191, sponsored by Senator William J. Hamilton, Jr. (D-Middlesex), which amends the public bidding laws by providing that when a public contract is to be performed by the State of New Jersey through the Division of Building and Construction for a contract sum of less than \$20,000 the Director of the Division or the Department of State may waive the bond requirement of the act.

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