

**SENATE, No. 1886**

**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

INTRODUCED OCTOBER 4, 2004

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Assemblyman HERBERT CONAWAY, JR.**

**District 7 (Burlington and Camden)**

**Co-Sponsored by:**

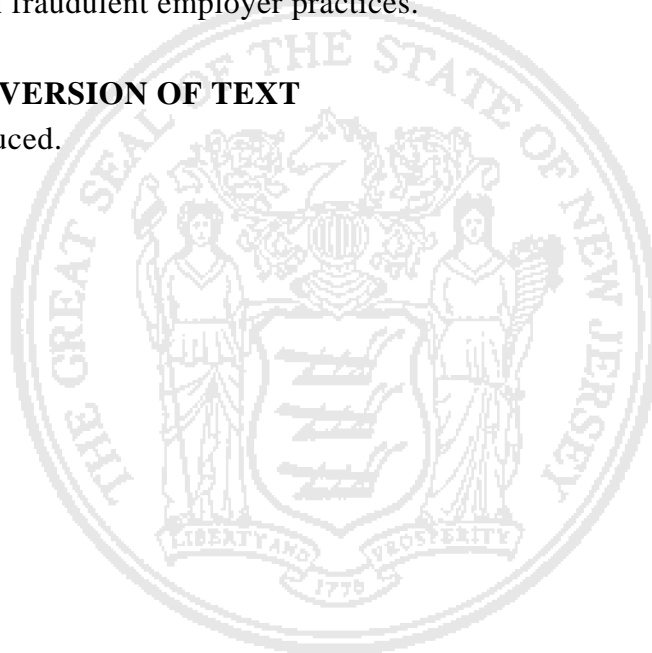
**Assemblywoman Greenstein, Assemblymen Eagler and Stack**

**SYNOPSIS**

Enhances rights and remedies of employees who disclose or refuse to participate in fraudulent employer practices.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/10/2006)**

1 AN ACT concerning the rights and remedies of employees who  
2 disclose or refuse to participate in certain fraudulent practices of  
3 employers, and amending P.L.1986, c.105 and P.L.1995, c.142.

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

7  
8 1. Section 3 of P.L.1986, c.105, (C.34:19-3) is amended to read as  
9 follows:

10 3. An employer shall not take any retaliatory action against an  
11 employee because the employee does any of the following:

12 a. Discloses, or threatens to disclose to a supervisor or to a public  
13 body an activity, policy or practice of the employer, or another  
14 employer, with whom there is a business relationship, that the  
15 employee reasonably believes;

16 (1) is in violation of a law, or a rule or regulation promulgated  
17 pursuant to law, including any violation involving deception of, or  
18 misrepresentation to, any shareholder, investor, client, patient,  
19 customer, employee, former employee, retiree or pensioner of the  
20 employer or any governmental entity, or, in the case of an employee  
21 who is a licensed or certified health care professional, reasonably  
22 believes constitutes improper quality of patient care; or

23 (2) is fraudulent or criminal, including any activity, policy or  
24 practice of deception or misrepresentation which the employee  
25 reasonably believes may defraud any shareholder, investor, client,  
26 patient, customer, employee, former employee, retiree or pensioner of  
27 the employer or any governmental entity;

28 b. Provides information to, or testifies before, any public body  
29 conducting an investigation, hearing or inquiry into any violation of  
30 law, or a rule or regulation promulgated pursuant to law by the  
31 employer, or another employer, with whom there is a business  
32 relationship, including any violation involving deception of, or  
33 misrepresentation to, any shareholder, investor, client, patient,  
34 customer, employee, former employee, retiree or pensioner of the  
35 employer or any governmental entity, or, in the case of an employee  
36 who is a licensed or certified health care professional, provides  
37 information to, or testifies before, any public body conducting an  
38 investigation, hearing or inquiry into the quality of patient care; or

39 c. Objects to, or refuses to participate in any activity, policy or  
40 practice which the employee reasonably believes:

41 (1) is in violation of a law, or a rule or regulation promulgated  
42 pursuant to law, including any violation involving deception of, or  
43 misrepresentation to, any shareholder, investor, client, patient,

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

**Matter underlined thus is new matter.**

1 customer, employee, former employee, retiree or pensioner of the  
2 employer or any governmental entity, or, if the employee is a licensed  
3 or certified health care professional, constitutes improper quality of  
4 patient care;

5 (2) is fraudulent or criminal, including any activity, policy or  
6 practice of deception or misrepresentation which the employee  
7 reasonably believes may defraud any shareholder, investor, client,  
8 patient, customer, employee, former employee, retiree or pensioner of  
9 the employer or any governmental entity; or

10 (3) is incompatible with a clear mandate of public policy concerning  
11 the public health, safety or welfare or protection of the environment.  
12 (cf. P.L.1997, c.98, s.2)

13  
14 2. Section 5 of P.L.1986, c.105, (C.34:19-5) is amended to read as  
15 follows:

16 5. Upon a violation of any of the provisions of this act, an  
17 aggrieved employee or former employee may, within one year,  
18 institute a civil action in a court of competent jurisdiction. Upon the  
19 application of any party, a jury trial shall be directed to try the validity  
20 of any claim under this act specified in the suit. All remedies available  
21 in common law tort actions shall be available to prevailing plaintiffs.  
22 These remedies are in addition to any legal or equitable relief provided  
23 by this act or any other statute. The court [may] shall also order,  
24 where appropriate and to the fullest extent possible:

25 a. An injunction to restrain [continued] any violation of this act  
26 which is continuing at the time that the court issues its order;

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

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

30 d. The compensation for all lost wages, benefits and other  
31 remuneration; and

32 e. The payment by the employer of reasonable costs, and attorney's  
33 fees[;].

34 [f. Punitive damages; or

35 g. An] In addition, the court or jury may order: the assessment of  
36 a civil fine of not more than [\$1,000.00] \$10,000 for the first  
37 violation of the act and not more than [\$5,000.00] \$20,000 for each  
38 subsequent violation, which shall be paid to the State Treasurer for  
39 deposit in the General Fund; punitive damages; or both a civil fine and  
40 punitive damages. In determining the amount of punitive damages, the  
41 court or jury shall consider not only the amount of compensatory  
42 damages awarded to the employee, but also the amount of all damages  
43 caused to shareholders, investors, clients, patients, customers,  
44 employees, former employees, retirees or pensioners of the employer,  
45 or to the public or any governmental entity, by the activities, policies  
46 or practices of the employer which the employee disclosed, threatened

1 to disclose, provided testimony regarding, objected to, or refused to  
2 participate in.

3 (cf: P.L.1990, c.12, s.4)

4

5 3. Section 6 of P.L.1995, c.142 (C.2A:15-5.14) is amended to read  
6 as follows:

7 6. a. Before entering judgment for an award of punitive damages,  
8 the trial judge shall ascertain that the award is reasonable in its amount  
9 and justified in the circumstances of the case, in light of the purpose  
10 to punish the defendant and to deter that defendant from repeating  
11 such conduct. If necessary to satisfy the requirements of this section,  
12 the judge may reduce the amount of or eliminate the award of punitive  
13 damages.

14 b. No defendant shall be liable for punitive damages in any action  
15 in an amount in excess of five times the liability of that defendant for  
16 compensatory damages or \$350,000, whichever is greater.

17 c. The provisions of subsection b. of this section shall not apply to  
18 causes of action brought pursuant to P.L.1993, c.137 (C.2A:53A-21  
19 et seq.), P.L.1945, c.169 (C.10:5-1 et seq.), P.L.1989, c.303  
20 (C.26:5C-5 et seq.), [or] P.L.1992, c.109 (C.2A:61B-1) or P.L.1986,  
21 c.105, (C.34:19-1 et seq.), or in cases in which a defendant has been  
22 convicted pursuant to R.S.39:4-50 or section 2 of P.L.1981, c.512  
23 (C.39:4-50.4a).

24 (cf: P.L.1995, c.142, s.6)

25

26 4. This act shall take effect immediately.

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28

29

#### STATEMENT

30

31 This bill enhances the scope and strengthens the enforcement  
32 provisions of the "Conscientious Employee Protection Act" (CEPA)  
33 P.L.1986, c.105 (C.34:19-1 et seq.), with special emphasis on  
34 protecting any employee who discloses to a supervisor or a public  
35 body, or refuses to participate in, any deception or misrepresentation  
36 which may defraud shareholders, investors, clients, patients,  
37 customers, employees, former employees, retirees or pensioners of the  
38 employer, or governmental entities.

39 The bill expressly includes, among the fraudulent or criminal  
40 employer actions which an employee may disclose and refuse to  
41 participate in, any activity, policy, or practice of deception or  
42 misrepresentation which the employee reasonably believes may defraud  
43 any of the employer's shareholders, investors, clients, patients,  
44 customers, employees, former employees, retirees or pensioners, or  
45 any governmental entity.

46 The bill requires, rather than permits, that the remedies ordered by

1 a court in a civil action for a violation of the act include, to the fullest  
2 extent possible, all of the following:

- 3 1. An injunction against any continuing violation of the act;
- 4 2. Reinstatement of the employee to the same, or comparable,  
5 employment with full fringe benefits and seniority rights;
- 6 3. Compensation for all lost remuneration; and
- 7 4. Payment of reasonable costs and lawyers fees.

8 As is currently the case under CEPA, the court may also order civil  
9 fines and punitive damages. The bill amends that law to raise the  
10 maximum civil fine for a first violation from \$1,000 to \$10,000 and for  
11 subsequent violations from \$5,000 to \$20,000, and to direct the court,  
12 when determining the amount of any punitive damages to be ordered,  
13 to consider not only the amount of compensatory damages awarded to  
14 the employee, but also the amount of damage caused by employer  
15 actions to shareholders, investors, clients, patients, customers,  
16 employees, former employees, retirees or pensioners of the employer,  
17 or to governmental entities or the public. Finally, the bill exempts  
18 punitive damages awarded under CEPA from the maximum limit set  
19 by the "Punitive Damages Act," P.L.1995, c.142 (C.2A:15-5.9 et  
20 seq.), which is the greater of \$350,000 or five times the awarded  
21 compensatory damages.

22 This bill is intended to enhance the scope and strengthens the  
23 enforcement provisions of the CEPA, and is not intended to diminish,  
24 reduce or curtail the rights or remedies available to employees under  
25 that act in any way.