



New Jersey's Ban the Box Liability Language a Model for the Nation

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TRENTON, N.J. – For the past two years, the New Jersey Civil Justice Institute (NJCJI) has been involved in negotiations over the Opportunity to Compete Act, or so-called ‘Ban-the-Box’ legislation, which was signed into law today by Gov. Chris Christie.

A1999, which was sponsored by Senator Sandra Cunningham (D-31) and Assemblywoman Bonnie Watson Coleman (D-15), was of significant concern to NJCJI because of its implications for employer liability. However, thanks to Sen. Cunningham's leadership and willingness to listen to the concerns of the business community, language drafted by NJCJI's Alida Kass that addresses our liability concerns was included in the final law. As other states look to pass similar legislation, they should look to New Jersey's law as a model of legislation that “bans the box” without raising liability concerns.

The most significant improvement to A1999 over previous versions of this legislation was the inclusion of NJCJI-drafted liability language that ensures that a violation of the act cannot be used to establish liability under this statute or any other statute.

Sponsors initially offered language that clarified there would be no private right of action under the bill. However, we were concerned that the legislation would establish a standard of behavior for employers, and that a departure from that standard could facilitate litigation under other existing statutes, such as the NJ Law Against Discrimination (LAD) or the Concerned Employee Protection Act (CEPA).

Ultimately our proposed language was included, which specifies that the law does not establish a standard of behavior with respect to any other law, and that evidence of an employer's violation of the act is not admissible in any legal proceeding, save to enforce the provisions of the act.

“Well-intentioned regulation often clashes with New Jersey's broader legal landscape in a way that threatens to greatly increase New Jersey employers' liability risk,” said NJCJI's president Marcus Rayner. “We are very pleased language limiting litigation was included in the law. Not only does it significantly improve this particular legislation, we hope it will be a model for legislators seeking to regulate a particular practice without unnecessarily creating or expanding liability.”

The New Jersey Civil Justice Institute (NJCJI) advocates for a civil justice system that treats all parties fairly and discourages lawsuit abuse. NJCJI and its members believe that a fair civil justice system resolves disputes expeditiously and impartially, based solely upon application of the law to the facts of each case. Such a system fosters public trust and motivates professionals, sole proprietors, and businesses to provide safe and reliable products and services while ensuring that truly injured people are fully compensated for their losses. Please visit our website, <http://www.civiljusticenj.org>, or contact a member of the NJCJI team to learn more.

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