

P.L. 2009, CHAPTER 194, *approved January 14, 2010*
Senate Committee Substitute (*Second Reprint*) for
Senate, No. 2773

1 **AN ACT** concerning the suspension or revocation of certain licenses
2 for certain repeated violations of laws regarding wages, benefits
3 and taxes, and supplementing Title 34 of the Revised Statutes.
4

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

7
8 1. As used in this act:

9 "Agency" means any agency, department, board or commission
10 of this State, or of any political subdivision of this State, that issues
11 a license for purposes of operating a business in this State.

12 "Commissioner" means the Commissioner of Labor and
13 Workforce Development.

14 "License" means any agency permit, certificate, approval,
15 registration, charter or similar form of authorization that is required
16 by law and that is issued by any agency for the purposes of
17 operating a business in this State, and includes, but is not limited to:

18 (1) A certificate of incorporation pursuant to the "New Jersey
19 Business Corporation Act," N.J.S.14A:1-1 et seq.;

20 (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

21 (3) A statement of qualification or a statement of foreign
22 qualification pursuant to the "Uniform Partnership Act (1996),"
23 P.L.2000, c.161 (C.42:1A-1 et al.);

24 (4) A certificate of limited partnership or a certificate of
25 authority pursuant to the "Uniform Limited Partnership Law
26 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

27 (5) A certificate of formation or certified registration pursuant
28 to the "New Jersey Limited Liability Company Act," P.L.1993,
29 c.210 (C.42:2B-1 et seq.); and

30 (6) Any license, certificate, permit or registration pursuant to
31 R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey
32 Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of
33 P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.);
34 section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of
35 P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor
36 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

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:

¹ Senate floor amendments adopted December 10, 2009.

² Senate floor amendments adopted January 7, 2010.

1 "State wage, benefit and tax laws" means:

2 (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

3 (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150
4 (C.34:11-56.25 et seq.);

5 (3) The "New Jersey State Wage and Hour Law," P.L.1966,
6 c.113 (C.34:11-56a et seq.);

7 (4) The workers' compensation law, R.S.34:15-1 et seq.;

8 (5) The "unemployment compensation law," R.S.43:21-1 et seq.;

9 (6) The "Temporary Disability Benefits Law," P.L.1948, c.110
10 (C.43:21-25 et al.);

11 (7) P.L.2008, c.17 (C.43:21-39.1 et al); and

12 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
13 seq.

14

15 2. a. If the commissioner determines that an employer has
16 failed, for one or more of its employees, to maintain and report ²[all
17 records] every record² regarding wages, benefits and taxes which
18 the employer is required to maintain and report pursuant to State
19 wage, benefit and tax laws, as defined in section 1 of this act, and
20 has, in connection with that failure to maintain or report the records,
21 failed to pay wages, benefits, taxes or other contributions or
22 assessments as required by those laws, the commissioner shall, as
23 an alternative to, or in addition to, any other actions taken in the
24 enforcement of those laws, notify the employer of the determination
25 and have an audit of the employer and any successor firm of the
26 employer conducted not more than 12 months after the
27 determination.

28 b. If, in an audit conducted pursuant to subsection a. of this
29 section, the commissioner determines that the employer or any
30 successor firm to the employer has continued in its failure to
31 maintain or report records as required by those laws and continued
32 in its failure to pay wages, benefits, taxes or other contributions or
33 assessments as required by those laws, the commissioner:

34 (1) May, after affording the employer or successor firm notice
35 and an opportunity for a hearing in accordance with the provisions
36 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
37 1 et seq.), issue a written determination directing any appropriate
38 agency to suspend any one or more licenses that are held by the
39 employer or successor firm, for a period of time determined by the
40 commissioner. In determining the length of a suspension, the
41 commissioner shall consider any of the following factors which are
42 relevant:

43 (a) The number of employees for which the employer or
44 successor firm failed to maintain or report required records and pay
45 required wages, benefits, taxes or other contributions or
46 assessments;

- 1 (b) The total amount of wages, benefits, taxes or other
2 contributions or assessments not paid by the employer or successor
3 firm;
- 4 (c) Any other harm resulting from the violation;
- 5 (d) Whether the employer or successor firm made good faith
6 efforts to comply with any applicable requirements;
- 7 (e) The duration of the violation;
- 8 (f) The role of the directors, officers or principals of the
9 employer or successor firm in the violation;
- 10 (g) Any prior misconduct by the employer or successor firm;
11 and
- 12 (h) Any other factors the commissioner considers relevant; and
- 13 (2) Shall conduct a subsequent audit or inspection of the
14 employer or any successor firm of the employer not more than 12
15 months after the date of the commissioner's written determination.
- 16 c. If, in the subsequent audit or inspection conducted pursuant to
17 subsection b. of this section, the commissioner determines that the
18 employer or successor firm has continued in its failure to maintain
19 or report records as required pursuant to State wage, benefit and tax
20 laws, as defined in section 1 of this act, and continued in its failure
21 to pay wages, benefits, taxes or other contributions or assessments
22 as required by those laws, the commissioner, after affording the
23 employer or successor firm notice and an opportunity for a hearing
24 in accordance with the provisions of the "Administrative Procedure
25 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall issue a written
26 determination directing any appropriate agency to permanently
27 revoke any one or more licenses that are held by the employer or
28 any successor firm to the employer and that are necessary to operate
29 the employer or successor firm.
- 30 d. Upon receipt of any written determination of the
31 commissioner directing an agency to suspend or revoke a license
32 pursuant to this section, and notwithstanding any other law, the
33 agency shall immediately suspend or revoke the license.
- 34 e. In instances where an employee leasing company has
35 entered into an employee leasing agreement with a client company
36 pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written
37 determination by the commissioner directing agencies to suspend an
38 employer license pursuant to subsection b. of this section, or revoke
39 an employer license pursuant to subsection c. of this section, for a
40 failure or continued failure to keep records regarding, and to pay,
41 wages, benefits and taxes pursuant to State wage, benefit and tax
42 laws, shall be for the suspension or revocation of the licenses of the
43 client company and not the licenses of the employee leasing
44 company if the commissioner determines that the failure or
45 continued failure was caused by incomplete, inaccurate, misleading,
46 or false information provided to the employee leasing company by
47 the client company. Nothing in this subsection shall be construed

1 as diminishing or limiting the authority or obligation of the
2 commissioner to rescind the registration of an employee leasing
3 company pursuant to the provisions of section 10 of P.L.2001,
4 ²[c.282] 260²(C.34:8-76).¹

5

6 3. A rebuttable presumption that an employer has established a
7 successor firm shall arise if the two parties share two or more of the
8 following capacities or characteristics:

- 9 a. Performing similar work within the same geographical area;
- 10 b. Occupying the same premises;
- 11 c. Having the same telephone or fax number;
- 12 d. Having the same e-mail address or Internet website;
- 13 e. Employing substantially the same work force, administrative
14 employees, or both;
- 15 f. Utilizing the same tools, equipment or facilities;
- 16 g. Employing or engaging the services of any person or persons
17 involved in the direction or control of the other; or
- 18 h. Listing substantially the same work experience.

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20 4. a. Each employer which is required to maintain and report
21 records regarding wages, benefits, taxes and other contributions and
22 assessments pursuant to State wage, benefit and tax laws, as defined
23 in section 1 of this act, shall conspicuously post notification, in a
24 place or places accessible to all employees in each of the employer's
25 workplaces, in a form issued by regulation adopted by the
26 commissioner, of the obligation of the employer to maintain and
27 report those records. The employer shall also provide each
28 employee a written copy of the notification not later than 30 days
29 after the form of the notification is issued, or, if the employee is
30 hired after the issuance, at the time of the employee's hiring. In
31 adopting the regulation regarding the notification requirement, the
32 commissioner shall, to the greatest extent practicable, design the
33 notification in a manner which coordinates or consolidates the
34 notification with any other notifications required pursuant to State
35 wage, benefit and tax laws, as defined in section 1 of this act. The
36 notification shall also provide information on how an employee or
37 the employee's authorized representative, may contact, by
38 telephone, mail and e-mail, a representative of the commissioner to
39 provide information to, or file a complaint with, the representative
40 regarding possible violations of the requirements of this act or any
41 State wage, benefit and tax law, as defined in section 1 of this act,
42 or may obtain information about any actual violation, including any
43 audit undertaken pursuant to this act.

44 b. No employer shall discharge or in any other manner
45 discriminate against an employee because the employee has made
46 an inquiry or complaint to his employer, to the commissioner or to
47 his authorized representative regarding any possible violation by the

1 employer of the provisions of this act or any State wage, benefit and
2 tax laws, as defined in section 1 of this act, or because the employee
3 has caused to be instituted or is about to cause to be instituted any
4 proceeding under or related to this act or those laws, or because the
5 employee has testified or is about to testify in the proceeding.

6 c. Any employer who violates any provision of this section
7 shall be guilty of a disorderly persons offense and shall, upon
8 conviction, be fined not less than \$100 nor more than \$1,000. In
9 the case of a discharge or other discriminatory action in violation of
10 this section, the employer shall also be required to offer
11 reinstatement in employment to the discharged employee and to
12 correct any discriminatory action, and to pay to the employee all
13 reasonable legal costs of the action, all wages and benefits lost as a
14 result of the discharge or discriminatory action, plus punitive
15 damages equal to two times the lost wages and benefits, under
16 penalty of contempt proceedings for failure to comply with the
17 requirement.

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19 5. This act shall take effect ¹**[immediately]** on the 180th day
20 after the date of enactment, except that the Commissioner of Labor
21 and Workforce Development shall take any anticipatory
22 administrative action in advance of the effective date as is necessary
23 for the implementation of this act.¹

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28 _____
29 Concerns suspension and revocation of employer licenses for
repeated violations of wage, benefit and tax laws.