

**SENATE, No. 1790**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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INTRODUCED FEBRUARY 5, 2018

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**SYNOPSIS**

Concerns law regarding failure to pay wages.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT concerning enforcement, penalties, and procedures for law  
2 regarding failure to pay wages, revising various parts of the  
3 statutory law, and supplementing article 3 of chapter 11 of Title  
4 34 of the Revised Statutes.

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

8  
9 1. Section 10 of P.L.1999, c.90 (C.2C:40A-2) is amended to  
10 read as follows:

11 10. Violation of contract to pay employees.

12 a. An employer who has agreed with an employee or with a  
13 bargaining agent for employees to pay wages, compensation or  
14 benefits to or for the benefit of employees commits a disorderly  
15 persons offense if the employer:

16 (1) fails to pay wages when due and as required by law; or

17 (2) fails to pay compensation or benefits as agreed and as  
18 required by law, including all State wage, benefit and tax laws  
19 within 30 days after due.

20 b. If a corporate employer violates subsection a., any officer or  
21 employee of the corporation who is responsible for the violation  
22 commits a disorderly persons offense.

23 c. Upon the presentation of sufficient evidence of a violation of  
24 this section, the fact finder may infer that an employer who fails to  
25 present employee records, as required pursuant to State wage,  
26 benefit and tax laws, employed the complainant for the period of  
27 time, and owes the amount of wages, as alleged in the complaint,  
28 unless the employer demonstrates good cause for the failure to  
29 present employee records.

30 d. A complaint alleging a violation of this section shall be filed  
31 where the offense occurred, which for purposes of this section may  
32 be the place where the employee was hired or the place where the  
33 relevant work was performed by the employee.

34 e. Jurisdiction for prosecution under this section shall be the  
35 place where the offense occurred, which for purposes of this section  
36 may be the place where the employee was hired or the place where  
37 the relevant work was performed by the employee.

38 f. An employer found to owe wages to an employee because  
39 the employer committed a violation of this section shall pay the  
40 employee the wages owed plus liquidated damages equal to 200  
41 percent of the wages owed, and reasonable costs of the action to the  
42 employee.

43 g. In addition to damages provided in this or any other law, an  
44 employer found guilty of violating the provisions of this section  
45 shall be fined \$500 plus a penalty equal to 20 percent of any wages

**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.

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1 owed for a first offense, and \$1,000 plus a penalty equal to 20  
2 percent of any wages owed for subsequent offenses. Any sum  
3 collected as a fine or penalty pursuant to this subsection shall be  
4 applied toward enforcement and administration costs of the  
5 Division of Wage and Hour Compliance in the Department of Labor  
6 and Workforce Development.

7 h. An employer who is found to have retaliated against an  
8 employee for filing a complaint under this section commits a  
9 disorderly persons offense and shall, upon conviction for the  
10 violation, be fined not less than \$100 nor more than \$1,000, and  
11 shall be liable to the employee for all wages lost as a result of the  
12 retaliation plus damages equal to 200 percent of the wages lost as a  
13 result of the retaliation, and reasonable costs of the action to the  
14 employee and, if the employee was discharged, be required to offer  
15 reinstatement, unless the reinstatement is prohibited by law.

16 i. No payment of an amount of wages owed or related  
17 damages, including wages or damages related to retaliation, shall be  
18 required under this section in addition to any amount of wages and  
19 damages paid for the same violation pursuant to any action taken  
20 under State wage and hour laws.

21 j. For purposes of this section:

22 “Compensation or benefits” is remuneration received in return  
23 for services rendered and includes, but is not limited to, health  
24 benefits, pensions, medical treatment, disability compensation and  
25 workers’ compensation, including death benefits to dependents of  
26 workers who have died as a result of their employment.

27 “Employee” means any person suffered or permitted to work by  
28 an employer, except that independent contractors and  
29 subcontractors shall not be considered employees, except that, for  
30 the purposes of subsections c. through i. of this section, “employee”  
31 shall not include any employee working in the construction industry  
32 under the provisions of a collective bargaining agreement.

33 “Employer” means any individual, partnership, association, joint  
34 stock company, trust, corporation, the administrator or executor of  
35 the estate of a deceased individual, or the receiver, trustee, or  
36 successor of any of the same, employing any person in this State,  
37 except that, for the purposes of subsections c. through i. of this  
38 section, “employer” shall not include any employer in the  
39 construction industry with respect to employees of that employer  
40 working under the provisions of a collective bargaining agreement  
41 with the employer. For the purposes of this section the officers of a  
42 corporation and any agents having the management of that  
43 corporation shall be deemed to be the employers of the employees  
44 of the corporation.

45 “State wage and hour laws” means article 1 of chapter 11 of Title  
46 34 of the Revised Statutes and all acts supplementing that article  
47 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that  
48 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),

1 and article 3 of chapter 11 of Title 34 of the Revised Statutes  
2 (R.S.34:11-57 et seq.), but "State wage and hour laws" do not  
3 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150  
4 (C.34:11-56.25 et seq.), or "The Public Works Contractor  
5 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.):

6 "State wage, benefit and tax laws" means State wage and hour  
7 laws and all of the following:

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

9 (2) The "unemployment compensation law," R.S.43:21-1 et  
10 seq.;

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

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

14 (5) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et  
15 seq.

16 "When due" is the time agreed upon by the employer and  
17 employee but in any case not greater than 16 days of completion of  
18 the work as provided for under section 2 of P.L.1965, c.173  
19 (C.34:11-4.2) and in accordance with a bi-monthly payment  
20 schedule.

21 (cf: P.L.1999, c.90, s.10)

22  
23 2. Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to  
24 read as follows:

25 2. a. If the commissioner is notified pursuant to subsection g.  
26 of this section by the Attorney General, the Attorney General's  
27 designee, or a court, of a conviction of an employer under  
28 subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2), or if the  
29 commissioner determines that an employer has failed, for one or  
30 more of its employees, to maintain and report every record  
31 regarding wages, benefits and taxes which the employer is required  
32 to maintain and report pursuant to State wage, benefit and tax laws,  
33 as defined in section 1 of this act, and has, in connection with that  
34 failure to maintain or report the records, failed to pay wages,  
35 benefits, taxes or other contributions or assessments as required by  
36 those laws, the commissioner shall, as an alternative to, or in  
37 addition to, any other actions taken in the enforcement of those  
38 laws, notify the employer of the determination and have an audit of  
39 the employer and any successor firm of the employer conducted not  
40 more than 12 months after the determination.

41 b. If, in an audit conducted pursuant to subsection a. of this  
42 section, the commissioner determines that the employer or any  
43 successor firm to the employer has continued in its failure to  
44 maintain or report records as required by those laws and continued  
45 in its failure to pay wages, benefits, taxes or other contributions or  
46 assessments as required by those laws, or if the commissioner is  
47 notified pursuant to subsection g. of this section of a subsequent

1 conviction of the employer under subsection a. of section 10 of  
2 P.L.1999, c.90 (C.2C:40A-2), the commissioner:

3 (1) May, after affording the employer or successor firm notice  
4 and an opportunity for a hearing in accordance with the provisions  
5 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
6 1 et seq.), issue a written determination directing any appropriate  
7 agency to suspend any one or more licenses that are held by the  
8 employer or successor firm, for a period of time determined by the  
9 commissioner. In determining the length of a suspension, the  
10 commissioner shall consider any of the following factors which are  
11 relevant:

12 (a) The number of employees for which the employer or  
13 successor firm failed to maintain or report required records and pay  
14 required wages, benefits, taxes or other contributions or  
15 assessments;

16 (b) The total amount of wages, benefits, taxes or other  
17 contributions or assessments not paid by the employer or successor  
18 firm;

19 (c) Any other harm resulting from the violation;

20 (d) Whether the employer or successor firm made good faith  
21 efforts to comply with any applicable requirements;

22 (e) The duration of the violation;

23 (f) The role of the directors, officers or principals of the  
24 employer or successor firm in the violation;

25 (g) Any prior misconduct by the employer or successor firm;  
26 and

27 (h) Any other factors the commissioner considers relevant; and

28 (2) Shall conduct a subsequent audit or inspection of the  
29 employer or any successor firm of the employer not more than 12  
30 months after the date of the commissioner's written determination.

31 c. If, in the subsequent audit or inspection conducted pursuant  
32 to subsection b. of this section, the commissioner determines that  
33 the employer or successor firm has continued in its failure to  
34 maintain or report records as required pursuant to State wage,  
35 benefit and tax laws, as defined in section 1 of this act, and  
36 continued in its failure to pay wages, benefits, taxes or other  
37 contributions or assessments as required by those laws, or if the  
38 commissioner is notified pursuant to subsection g. of this section of  
39 a subsequent conviction of the employer under subsection a. of  
40 section 10 of P.L.1999, c.90 (C.2C:40A-2), the commissioner, after  
41 affording the employer or successor firm notice and an opportunity  
42 for a hearing in accordance with the provisions of the  
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
44 seq.), shall issue a written determination directing any appropriate  
45 agency to permanently revoke any one or more licenses that are  
46 held by the employer or any successor firm to the employer and that  
47 are necessary to operate the employer or successor firm.

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1 d. Upon receipt of any written determination of the  
2 commissioner directing an agency to suspend or revoke a license  
3 pursuant to this section, and notwithstanding any other law, the  
4 agency shall immediately suspend or revoke the license.

5 e. In instances where an employee leasing company has  
6 entered into an employee leasing agreement with a client company  
7 pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written  
8 determination by the commissioner directing agencies to suspend an  
9 employer license pursuant to subsection b. of this section, or revoke  
10 an employer license pursuant to subsection c. of this section, for a  
11 failure or continued failure to keep records regarding, and to pay,  
12 wages, benefits and taxes pursuant to State wage, benefit and tax  
13 laws, shall be for the suspension or revocation of the licenses of the  
14 client company and not the licenses of the employee leasing  
15 company if the commissioner determines that the failure or  
16 continued failure was caused by incomplete, inaccurate, misleading,  
17 or false information provided to the employee leasing company by  
18 the client company. Nothing in this subsection shall be construed  
19 as diminishing or limiting the authority or obligation of the  
20 commissioner to rescind the registration of an employee leasing  
21 company pursuant to the provisions of section 10 of P.L.2001,  
22 c.260 (C.34:8-76).

23 f. If, in the course of an audit or inspection conducted pursuant  
24 to this section, the commissioner discovers that an employee of the  
25 employer or of any successor firm of the employer has failed to  
26 provide compensation to the employee as required under any of the  
27 State wage and hour laws as defined in section 10 of P.L.1999, c.90  
28 (C.2C:40A-2), then the commissioner shall initiate a wage claim on  
29 behalf of the employee pursuant to R.S.34:11-58.

30 g. Upon the conviction of an employer under subsection a. of  
31 section 10 of P.L.1999, c.90 (C.2C:40A-2) the Attorney General,  
32 the Attorney General's designee, or the court shall notify the  
33 commissioner of the employer's conviction.

34 (cf: P.L.2009, c.194, s.2)

35  
36 3. Section 10 of P.L.1965, c.173 (C.34:11-4.10) is amended to  
37 read as follows:

38 10. a. Any employer who knowingly and willfully violates any  
39 provision of P.L.1965, c.173 (34:11-4.1 et seq.), or who discharges,  
40 or in any other manner discriminates against an employee because  
41 the employee has made a complaint to that employee's employer, to  
42 the commissioner, or to that employee's authorized representative,  
43 that the employer has not paid the employee the full amount of  
44 wages agreed upon or required by, and in the manner required by,  
45 the provisions of article 1 of chapter 11 of Title 34 of the Revised  
46 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),  
47 or because the employee has caused to be instituted or is about to  
48 cause to be instituted any proceeding under or related to that article

1 or those acts, or because that employee has testified or is about to  
2 testify in any proceeding under or relating to that article or those  
3 acts, or because the employee has informed any person about rights  
4 under State laws regarding wages and hours worked, shall be guilty  
5 of a disorderly persons offense and, upon conviction for a violation,  
6 shall be punished by a fine of not less than \$100 nor more than  
7 \$1,000. Each day during which any violation of [this act] article 1  
8 of chapter 11 of Title 34 of the Revised Statutes and all acts  
9 supplementing that article (R.S.34:11-2 et al.) continues shall  
10 constitute a separate and distinct offense. In the case of a discharge  
11 or other discriminatory action against the employee which is in  
12 violation of this subsection, the employer shall be required to offer  
13 reinstatement in employment to the discharged employee, unless the  
14 reinstatement is prohibited by law, and to correct the discriminatory  
15 action, and also to pay to the employee, in full, all wages lost as a  
16 result of that discharge or discriminatory action, plus any  
17 reasonable cost of the action, and liquidated damages equal to 200  
18 percent of the wages due, under penalty of contempt proceedings.  
19 Taking an adverse action against an employee within ninety days of  
20 the employee filing a complaint with the commissioner for a  
21 violation of article 1 of chapter 11 of Title 34 of the Revised  
22 Statutes and all acts supplementing that article (R.S.34:11-2 et al.)  
23 shall raise a presumption that the action was a discriminatory action  
24 taken in retaliation, which may be rebutted only by clear and  
25 convincing evidence that the action was taken for other,  
26 permissible, reasons. An employee complaint or other  
27 communication need not make explicit reference to any section or  
28 provision of any State law regarding wages and hours worked to  
29 trigger the protections of this section.

30 b. As an alternative to or in addition to any other sanctions  
31 provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et  
32 seq.), when the Commissioner of Labor and Workforce  
33 Development finds that an employer has violated that act, or taken  
34 any discriminatory action against the employee in violation of  
35 subsection a. of this section, the commissioner is authorized to  
36 assess and collect administrative penalties, up to a maximum of  
37 \$250 for a first violation and up to a maximum of \$500 for each  
38 subsequent violation, specified in a schedule of penalties to be  
39 promulgated as a rule or regulation by the commissioner in  
40 accordance with the "Administrative Procedure Act," P.L.1968,  
41 c.410 (C.52:14B-1 et seq.). When determining the amount of the  
42 penalty imposed because of a violation, the commissioner shall  
43 consider factors which include the history of previous violations by  
44 the employer, the seriousness of the violation, the good faith of the  
45 employer and the size of the employer's business. No  
46 administrative penalty shall be levied pursuant to this section unless  
47 the Commissioner of Labor and Workforce Development provides  
48 the alleged violator with notification of the violation and of the  
49 amount of the penalty by certified mail and an opportunity to

1 request a hearing before the commissioner or his designee within 15  
2 days following the receipt of the notice. If a hearing is requested,  
3 the commissioner shall issue a final order upon such hearing and a  
4 finding that a violation has occurred. If no hearing is requested, the  
5 notice shall become a final order upon expiration of the 15-day  
6 period. Payment of the penalty is due when a final order is issued  
7 or when the notice becomes a final order. Any penalty imposed  
8 pursuant to this section may be recovered with costs in a summary  
9 proceeding commenced by the commissioner pursuant to **["the**  
10 **penalty enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty  
11 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
12 Any sum collected as a fine or penalty pursuant to this section shall  
13 be applied toward enforcement and administration costs of the  
14 Division of Workplace Standards in the Department of Labor and  
15 Workforce Development.

16 c. If any employer fails to pay the full amount of wages to an  
17 employee agreed to or required by, or in the manner required by,  
18 the provisions of article 1 of chapter 11 of Title 34 of the Revised  
19 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),  
20 the employee may recover in a civil action the full amount of any  
21 wages due, or any wages due because of any discriminatory action  
22 in violation of subsection a. of this section, plus an amount of  
23 liquidated damages equal to 200 percent of the wages due, together  
24 with costs and reasonable attorney's fees as are allowed by the  
25 court, except that if there is an agreement of the employee to accept  
26 payment of the unpaid wages supervised by the commissioner  
27 pursuant to section 9 of P.L.1965, c.173 (C.34:11-4.9) or R.S.34:11-  
28 58, the liquidated damages shall be equal to 200 percent of wages  
29 that were due prior to the supervised payment. Any agreement by  
30 the employee to work for, or accept, wages paid which are less than  
31 the amount agreed to or required by law, or paid in a manner other  
32 than that required by article 1 of chapter 11 of Title 34 of the  
33 Revised Statutes and all acts supplementing that article (R.S.34:11-  
34 2 et al.), shall be no defense to the action. The employee shall be  
35 entitled to maintain the action for and on behalf of other similarly  
36 situated employees, or designate an agent or representative to  
37 maintain the action for and on behalf of all similarly situated  
38 employees. The employee may bring the action to recover unpaid  
39 wages pursuant to this section in the Superior Court, and may bring  
40 the action in the Division of Small Claims of the Superior Court,  
41 Law Division, Special Civil Part if the sum of the unpaid wages and  
42 the liquidated damages does not exceed the jurisdictional limits of  
43 the Division of Small Claims. Upon the request of any employee  
44 not paid the full wages agreed upon or required by law and in the  
45 manner required by the provisions of article 1 of chapter 11 of Title  
46 34 of the Revised Statutes and all acts supplementing that article  
47 (R.S.34:11-2 et al.), the commissioner may take an assignment of  
48 the wage claim in trust for the assigning employee and may bring  
49 any legal action necessary to collect the claim, and the employer  
50 shall be required to pay to the employee the unpaid wages and



1 liquidated damages equal to 200 percent of the amount of the  
2 unpaid wages and pay to the commissioner the costs and reasonable  
3 attorney's fees as determined by the court.

4 (cf: P.L.1991, c.205, s.3)

5

6 4. Section 25 of P.L.1966, c.113 (C.34:11-56a24) is amended  
7 to read as follows:

8 25. a. Any employer who discharges or in any other manner  
9 discriminates against any employee because the employee has made  
10 any complaint to his employer, to the commissioner, the director or  
11 to their authorized representatives, or to a representative of the  
12 employee, that he has not been paid wages in accordance with the  
13 provisions of this act, or because such employee has caused to be  
14 instituted or is about to cause to be instituted any proceeding under  
15 or related to this act, or because such employee has testified or is  
16 about to testify in any such proceeding, or because such employee  
17 has served or is about to serve on a wage board, or because the  
18 employee has informed any person about rights under State laws  
19 regarding wages and hours of work, shall be guilty of a disorderly  
20 persons offense and shall, upon conviction therefor, be fined not  
21 less than \$100 nor more than \$1,000. Such employer shall be  
22 required, as a condition of such judgment of conviction, to offer  
23 reinstatement in employment to any such discharged employee,  
24 unless the reinstatement is prohibited by law, and to correct any  
25 such discriminatory action, and also to pay to any such employee in  
26 full, all wages lost as a result of such discharge or discriminatory  
27 action and an additional amount of liquidated damages equal to 200  
28 percent of the wages due, under penalty of contempt proceedings  
29 for failure to comply with such requirement. Taking an adverse  
30 action against an employee within ninety days of the employee  
31 filing a complaint with the commissioner for a violation of  
32 P.L.1966, c.113 (C.34:11-56a et seq.) shall raise a presumption that  
33 the action was a discriminatory action taken in retaliation, which  
34 may be rebutted only by clear and convincing evidence that the  
35 action was taken for other, permissible, reasons. An employee  
36 complaint or other communication need not make explicit reference  
37 to any section or provision of State law regarding wages or hours  
38 worked to trigger the protections of this section.

39 b. As an alternative to or in addition to any other sanctions  
40 provided by law for violations of P.L.1966, c.113 (C.34:11-56a et  
41 seq.), when the Commissioner of Labor and Workforce  
42 Development finds that an employer has violated that act, or taken  
43 any discriminatory action against the employee in violation of  
44 subsection a. of this section, the commissioner is authorized to  
45 assess and collect administrative penalties, up to a maximum of  
46 \$250 for a first violation and up to a maximum of \$500 for each  
47 subsequent violation, specified in a schedule of penalties to be  
48 promulgated as a rule or regulation by the commissioner in  
49 accordance with the "Administrative Procedure Act," P.L.1968,

1 c.410 (C.52:14B-1 et seq.). When determining the amount of the  
2 penalty imposed because of a violation, the commissioner shall  
3 consider factors which include the history of previous violations by  
4 the employer, the seriousness of the violation, the good faith of the  
5 employer and the size of the employer's business. No  
6 administrative penalty shall be levied pursuant to this section unless  
7 the Commissioner of Labor and Workforce Development provides  
8 the alleged violator with notification of the violation and of the  
9 amount of the penalty by certified mail and an opportunity to  
10 request a hearing before the commissioner or his designee within 15  
11 days following the receipt of the notice. If a hearing is requested,  
12 the commissioner shall issue a final order upon such hearing and a  
13 finding that a violation has occurred. If no hearing is requested, the  
14 notice shall become a final order upon expiration of the 15-day  
15 period. Payment of the penalty is due when a final order is issued  
16 or when the notice becomes a final order. Any penalty imposed  
17 pursuant to this section may be recovered with costs in a summary  
18 proceeding commenced by the commissioner pursuant to **["the**  
19 **penalty enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty  
20 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
21 Any sum collected as a fine or penalty pursuant to this section shall  
22 be applied toward enforcement and administration costs of the  
23 Division of Workplace Standards in the Department of Labor and  
24 Workforce Development.  
25 (cf: P.L.1991, c.205, s.22)

26  
27 5. Section 26 of P.L.1966, c.113 (C.34:11-56a25) is amended  
28 to read as follows:

29 26. If any employee is paid by an employer less than the  
30 minimum fair wage to which **[such]** the employee is entitled under  
31 the provisions of **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or  
32 by virtue of a minimum fair wage order **[such]**, the employee may  
33 recover in a civil action the full amount of **[such]** that minimum  
34 wage less any amount actually paid to him or her by the employer  
35 **[together with]** and an additional amount equal to 200 percent of  
36 the amount of the unpaid minimum wages as liquidated damages,  
37 plus costs and **[such]** reasonable attorney's fees as **[may be**  
38 **allowed]** determined by the court, **[and any]** except that if there is  
39 an agreement of the employee to accept payment of the unpaid  
40 wages or compensation supervised by the commissioner pursuant to  
41 section 24 of P.L.1966, c.113 (C.34:11-56a23) or R.S.34:11-58, the  
42 liquidated damages shall be equal to 200 percent of wages that were  
43 due prior to the supervised payment. Any agreement between  
44 **[such]** the employee and the employer to work for less than **[such]**  
45 the minimum fair wage shall be no defense to the action. An  
46 employee shall be entitled to maintain **[such]** the action for and on  
47 behalf of himself or other employees similarly situated, and **[such]**

1 the employee and employees may designate an agent or  
2 representative to maintain **[such]** the action for and on behalf of all  
3 employees similarly situated. The employee may bring the action  
4 to recover unpaid minimum wages pursuant to this section in the  
5 Superior Court, and may bring the action in the Division of Small  
6 Claims of the Superior Court, Law Division, Special Civil Part if  
7 the sum of the amount of unpaid minimum wages and the amount of  
8 liquidated damages does not exceed the jurisdictional limits of the  
9 Division of Small Claims.

10 At the request of any employee paid less than the minimum wage  
11 to which **[such]** the employee was entitled under the provisions of  
12 **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or under an order,  
13 the commissioner may take an assignment of the wage claim in trust  
14 for the assigning employee and may bring any legal action  
15 necessary to collect the claim, and the employer shall be required to  
16 pay to the employee the unpaid wages and liquidated damages equal  
17 to 200 percent the amount of the unpaid wages and pay to the  
18 commissioner the costs and **[such]** reasonable attorney's fees as  
19 **[may be allowed]** determined by the court.

20 (cf: P.L.1966, c.113, s.26)

21

22 6. Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is amended  
23 to read as follows:

24 1. No claim for unpaid minimum wages, unpaid overtime  
25 compensation, or other damages under this act shall be valid with  
26 respect to any such claim which has arisen more than **[2]** six years  
27 prior to the commencement of an action for the recovery thereof. In  
28 determining when an action is commenced, the action shall be  
29 considered to be commenced on the date when a complaint is filed  
30 with the Commissioner of the Department of Labor and **[Industry]**  
31 Workforce Development or the Director of **[the]** Wage and Hour  
32 **[Bureau]** Compliance, and notice of such complaint is served upon  
33 the employer; or, where an audit by the Department of Labor and  
34 **[Industry]** Workforce Development discloses a probable cause of  
35 action for unpaid minimum wages, unpaid overtime compensation,  
36 or other damages, and notice of such probable cause of action is  
37 served upon the employer by the Director of **[the]** Wage and Hour  
38 **[Bureau]** Compliance; or where a cause of action is commenced in  
39 a court of appropriate jurisdiction.

40 (cf: P.L.1967, c.216, s.1)

41

42 7. R.S.34:11-57 is amended to read as follows:

43 34:11-57. As used in this article:

44 "Commissioner" means the Commissioner of Labor and  
45 **[Industry]** Workforce Development or any person or persons in the  
46 department designated in writing by him for the purposes of this  
47 article.

1       “Community-based organization” means a public, or nonprofit  
2 private, organization funded with public or private funds, or both,  
3 that provides services to day laborers, migrant laborers, temporary  
4 laborers, low wage workers, or any other type of employee.

5       “Department” means the Department of Labor and Workforce  
6 Development.

7       "Employee" means any natural person who works for another for  
8 hire.

9       "Employer" means any person, partnership, firm or corporation  
10 employing another for hire.

11       “Legal services organization” means a public, or nonprofit  
12 private, organization funded with public or private funds, or both,  
13 that provides counseling or advice related to wage protection laws,  
14 preparation of legal documents, or representation of any person  
15 before a court or administrative agency.

16       “State wage and hour laws” means article 1 of chapter 11 of Title  
17 34 of the Revised Statutes and all acts supplementing that article  
18 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that  
19 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),  
20 and article 3 of chapter 11 of Title 34 of the Revised Statutes  
21 (R.S.34:11-57 et seq.), but “State wage and hour laws” do not  
22 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150  
23 (C.34:11-56.25 et seq.), or "The Public Works Contractor  
24 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

25       "Wages" means any moneys due an employee from the employer  
26 whether payable by the hour, day, week, semimonthly, monthly or  
27 yearly and shall include commissions, bonus, piecework  
28 compensation and any other benefits arising out of an employment  
29 contract.

30 (cf: P.L.1964, c.92, s.1)

31

32       8. R.S.34:11-58 is amended to read as follows:

33       34:11-58. a. An employee may file a claim for wages against an  
34 employer under this section or any of the other State wage and  
35 hours laws for wages owed related to work performed up to six  
36 years prior to the date the claim for wages is filed.

37       b. An employer found to owe an employee wages shall pay the  
38 employee the wages owed plus liquidated damages equal to 200%  
39 of the wages owed, exclusive of any costs or fees.

40       c. The commissioner is authorized and empowered to  
41 investigate any claim for wages due an employee and in such  
42 investigation may summon the defendant, subpoena witnesses,  
43 administer oaths, take testimony and shall upon such proceeding  
44 make a decision or award **【when the sum in controversy, exclusive**  
45 **of costs, does not exceed \$30,000.00】.**

46       Such decision or award shall be a judgment when a certified  
47 copy thereof is filed with the Superior Court.

1 Such judgment shall be entered in the same manner and have the  
2 same effect and be subject to the same proceedings as are  
3 judgments rendered in suits duly heard and determined by courts of  
4 competent jurisdiction.

5 d. Upon an investigation of a wage claim initiated pursuant to  
6 this section or any of the other State wage and hours laws, if an  
7 employer fails to provide sufficient employee records, as required  
8 to be kept under any State wage and hour laws, there shall be a  
9 rebuttable presumption that the employee worked for the employer  
10 for the period of time and for the amount of wages as alleged in the  
11 wage claim.

12 e. The commissioner is authorized to supervise the payment of  
13 amounts, including liquidated damages, due to employees under an  
14 award made pursuant to this section, and the employer may be  
15 required to make these payments to the commissioner to be held in  
16 a special account in trust for the employees, and paid on order of  
17 the commissioner directly to the employee or employees affected.  
18 The employer shall also pay the commissioner an administrative fee  
19 equal to not less than 10% or more than 25% of any payment made  
20 to the commissioner pursuant to this section. The amount of the  
21 administrative fee shall be specified in a schedule of fees to be  
22 promulgated by rule or regulation of the commissioner in  
23 accordance with the "Administrative Procedure Act," P.L.1968,  
24 c.410 (C.52:14B-1 et seq.). The fee shall be applied to enforcement  
25 and administration costs of the Division of Workplace Standards in  
26 the Department of Labor and Workforce Development.

27 f. Upon issuing a decision, under this section or any of the  
28 other State wage and hours laws, finding wages due to an employee  
29 in an amount equal to or greater than \$5,000, the commissioner  
30 shall:

31 (1) inform the employer of the commissioner's intention to  
32 conduct an audit of the employer or any successor firm of the  
33 employer pursuant to section 2 of P.L.2009, c.194 (C.34:1A-1.12);  
34 and

35 (2) notify the Division of Taxation in the Department of the  
36 Treasury of the decision and recommend that the division conduct  
37 an audit of the employer to ensure the proper withholding and  
38 payment of payroll and other taxes by the employer.

39 g. No payment of an amount of wages owed or related  
40 damages, including wages or damages related to retaliation, shall be  
41 required under the provision of this section, or under the provisions  
42 of any of the other State wage and hour laws, which results in a  
43 violation paying wages owed or damages more than one time for the  
44 same violation.

45 (cf: P.L.2006, c.25, s.1)

46  
47 9. (New section) a. If an employer fails to comply with a final  
48 determination of the commissioner or a judgment of a court,

1 including a small claims court, made under the provisions of State  
2 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40-2),  
3 to pay an employee any wages owed or damages awarded within ten  
4 days of the time that the determination or judgement requires the  
5 payment, the commissioner may do either or both of the following:

6 (1) issue, in the manner provided in subsection b. of section 2 of  
7 P.L.2009, c.194 (C.34:1A-1.12), a written determination directing  
8 any appropriate agency to suspend one or more licenses held by the  
9 employer or any successor firm of the employer until the employer  
10 complies with the determination or judgement; or

11 (2) issue a stop work order against the violators requiring the  
12 cessation of all business operations of the violator. The stop work  
13 order may only be issued against the individual or entity found to be  
14 in violation, and only as to the specific place of business or  
15 employment for which the violation exists. The stop work order  
16 shall be effective when served upon the violator or at a place of  
17 business or employment by posting a copy of the stop work order in  
18 a conspicuous location at the place of business or employment. The  
19 stop work order shall remain in effect until the commissioner issues  
20 an order releasing the stop work order upon a finding that the  
21 violation has been corrected. As a condition of release of a stop-  
22 work order under this section, the commissioner may require the  
23 employer against whom the stop-work order had been issued to file  
24 with the department periodic reports for a probationary period of  
25 two years.

26 b. Stop work orders and any penalties imposed under a stop  
27 work order against a corporation, partnership, or sole proprietorship  
28 shall be effective against any successor entity that has one or more  
29 of the same principals or officers as the corporation, partnership, or  
30 sole proprietorship against which the stop work order was issued  
31 and that is engaged in the same or equivalent trade or activity.

32 c. Any employee affected by a stop work order issued pursuant  
33 to this section shall be paid by the employer for the first ten days of  
34 work lost because of the stop work order.

35 d. A rebuttable presumption that an employer has established a  
36 successor entity shall arise if the two share at least three of the  
37 following capacities or characteristics:

- 38 (1) perform similar work;
- 39 (2) occupy the same premises;
- 40 (3) have the same telephone or fax number;
- 41 (4) have the same email address or Internet website;
- 42 (5) perform work in the same geographical area;
- 43 (6) employ substantially the same work force;
- 44 (7) utilize the same tools and equipment;
- 45 (8) employ or engage the services of any person or persons  
46 involved in the direction or control of the other; or
- 47 (9) list substantially the same work experience.

1       10. (New section) a. A client employer and a labor contractor  
2 providing workers to the client employer shall be subject to joint  
3 and several liability and shall share civil legal responsibility for any  
4 violations of the provisions of State wage and hour laws or  
5 violations of the provisions of section 10 of P.L.1999, c.90  
6 (C.2C:40A-2) regarding compliance with State wage and hour laws,  
7 including provisions regarding retaliatory actions against employees  
8 for exercising their rights under any of those laws, and both may be  
9 subject to any remedy provided for violations of those laws. A  
10 client employer shall not shift to the labor contractor any legal  
11 duties or liabilities under the provisions of the “Worker Health and  
12 Safety Act,” P.L.1965, c.154 (C.34:6A-1 et seq.) or “The Worker  
13 and Community Right to Know Act,” P.L.1983, c.315 (C.34:5A-1  
14 et seq.) with respect to workers supplied by the labor contractor. A  
15 waiver of the provisions of this section is contrary to public policy,  
16 and is void and unenforceable.

17       b. This section shall not be interpreted as:

18       (1) imposing individual liability on a homeowner for labor or  
19 services received at the home or the owner of a home-based  
20 business for labor or services received at the home; or

21       (2) restricting or limiting the rights of a client employer to  
22 recover from a labor contractor any expense to the client employer,  
23 or the rights of a labor contractor to recover from a client employer  
24 any expense to the labor contractor, resulting from any violation by  
25 the labor contractor or client employer of the provisions of State  
26 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-  
27 2), or restricting or limiting the provisions in contracts between  
28 client employers and labor contractors regarding the recovery of  
29 expenses pursuant to this paragraph.

30       c. As used in this section:

31       “Client employer” means a business entity, regardless of its  
32 form, that obtains or is provided workers, directly from a labor  
33 contractor or indirectly from a subcontractor, to perform labor or  
34 services within its usual course of business.

35       “Labor contractor” means any individual or entity that supplies,  
36 either with or without a contract, directly or indirectly, a client  
37 employer with workers to perform labor or services within the  
38 client employer’s usual course of business, except that “labor  
39 contractor” does not include a bona fide labor organization or  
40 apprenticeship program, or a hiring hall operated pursuant to a  
41 collective bargaining agreement.

42       “Usual course of business” means the regular and customary  
43 work of a business, performed within or upon the premises or  
44 worksite of the client employer, or any other place of business of  
45 the client employer for which services or labor are performed.

46

47       11. (New section) Each employer shall provide each current  
48 employee and each newly hired employee of the employer, a written

1 copy of the statement produced by the department pursuant to  
2 subsection c. of section 12 of P.L. , c. (C. ) (pending before  
3 the Legislature as this bill) of the employee's rights under the  
4 provisions of State wage and hour laws and the provisions of  
5 section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation of  
6 how to file a claim or take an action pursuant to those laws.

7  
8 12. (New section) The department, for the purpose of supporting  
9 the enforcement of the provisions of State wage and hour laws and  
10 the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), shall:

11 a. contract with community-based organizations and legal  
12 services organizations to disseminate information to day laborers,  
13 migrant laborers, temporary laborers, or any other type of employee  
14 concerning the protections afforded by State wage and hour laws  
15 and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by  
16 which an individual may take actions under those laws;

17 b. contract with community-based organizations and legal  
18 services organizations to investigate, prepare, and if necessary,  
19 represent employees in actions under State wage and hour laws or  
20 section 10 of P.L.1999, c.90 (C.2C:40A-2), including actions under  
21 those laws concerning retaliation against employees; and

22 c. produce, and make available to the public on the website of  
23 the department, a statement of employee rights under the provisions  
24 of State wage and hour laws and the provisions of section 10 of  
25 P.L.1999, c.90 (C.2C:40A-2), with an explanation of how to file a  
26 claim or take an action pursuant to those laws.

27 The contracts entered into between the department and  
28 community-based organizations and legal services organizations  
29 pursuant to this section shall require that the organizations make all  
30 services accessible to persons with limited English proficiency and  
31 shall provide that, in any case in which the community-based or  
32 legal services organization assists or represents employees pursuant  
33 to subsection b. of this section, 50 percent of any fees or penalties  
34 collected by the department shall be paid to the organization for  
35 services provided pursuant to contracts entered into pursuant to this  
36 section, and that payment shall be regarded as an enforcement and  
37 administrative cost of the Division of Workplace Standards of the  
38 department.

39 The department, and any community-based organization or legal  
40 services organization contracting with the department pursuant to  
41 this section, shall provide any individual seeking assistance to file a  
42 complaint or take an action regarding unpaid wages with a  
43 description of all of the applicable remedies available to the  
44 individual under State wage and hour laws and section 10 of  
45 P.L.1999, c.90 (C.2C:40A-2), including the individual's right to  
46 obtain liquidated damages, and that that right to damages is waived  
47 if the individual agrees to accept payment of the unpaid wages  
48 supervised by the commissioner.



1 13. (New section) a. The commissioner, in consultation with the  
 2 Administrative Director of the Courts and the Attorney General,  
 3 shall compile and prominently place on a website, maintained by  
 4 the department and available to the public, an annual report  
 5 evaluating the effectiveness and efficiency of the enforcement and  
 6 administration of wage claims and wage collections. The report  
 7 shall include, but not be limited to:

8 (1) the number of complaints, investigations, prosecutions,  
 9 dispositions, and business license suspensions and revocations, the  
 10 number and amount of penalties, the amount of wages recovered,  
 11 and the number of workers effected;

12 (2) an enumeration and description of all community-based and  
 13 legal services organizations contracted by the department to support  
 14 the enforcement; and

15 (3) recommendations for strengthening the implementation and  
 16 enforcement of P.L. , c. (C. ) (pending before the  
 17 Legislature as this bill).

18 b. The commissioner, in consultation with the Administrative  
 19 Director of the Courts and the Attorney General, shall compile and  
 20 prominently place on a website, maintained by the department and  
 21 available to the public, the following information regarding each  
 22 wage claim in which an employer was found to have been in  
 23 violation of one or more State wage and hour laws in a final  
 24 determination by the commissioner or a judgement of a court made  
 25 during the preceding period of not less than 12 months:

26 (1) the name and address of the employer;

27 (2) the nature of the claim, including whether it is a claim for  
 28 one or more of the following: unpaid wages; failure to pay the  
 29 minimum wage; failure to pay required overtime; or retaliation  
 30 against an employee in connection with State wage and hour laws;

31 (3) the number of affected employees, and the amount of wages  
 32 found owed; and

33 (4) any findings, penalties, and business license suspensions or  
 34 revocations that resulted from the wage claim.

35 The information on a claim shall be placed on the website not  
 36 more than 30 days after the final determination or judgement is  
 37 made.

38

39 14. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 This bill assists workers aggrieved by certain violations of laws  
 45 regarding the payment of wages by strengthening enforcement  
 46 procedures, remedies and a variety of criminal, civil and  
 47 administrative sanctions against the violators.

1 With respect to criminal sanctions, the bill revises the current  
2 provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), to  
3 strengthen enforcement procedures and criminal sanctions against  
4 employers who fail to pay wages, compensation or benefits required  
5 by law or retaliate against employees who file complaints regarding  
6 those violations.

7 Under the bill, a violator is required to pay the employee wages  
8 owed, plus liquidated damages equal to 200% of the wages owed.  
9 In addition to the damages, an employer found guilty of a violation  
10 is fined \$500 plus a penalty of 20% of any wages owed for a first  
11 offense, and a fine of \$1,000 plus a penalty of 20% of any wages  
12 owed for subsequent offenses. The bill also provides that an  
13 employer who is found to have retaliated against an employee for  
14 bringing a claim under the statute commits a disorderly persons  
15 offense and is liable to the employee for wages lost because of the  
16 retaliation plus damages equal to 200% of those wages.

17 Jurisdiction for a case, and the location for filing a complaint, is  
18 based on the location where the employee was hired or employed.  
19 If the employer fails to provide wage records required by law, it is  
20 presumed that the employer owes the amount of wages alleged,  
21 unless the employer demonstrates good cause for the failure.

22 In addition to its enhancements of criminal procedures and  
23 sanctions, the bill expands the enforcement provisions available to  
24 the Commissioner of Labor and Workforce Development and the  
25 remedies available to aggrieved workers.

26 The bill permits a worker to file a claim with the commissioner  
27 for wages owed to the worker related to work performed up to six  
28 years prior to the filing of the claim. An employer found to owe  
29 wages must pay the employee the wages owed plus liquidated  
30 damages equal to 200% of the owed wages. If an employer fails to  
31 provide the required employee records there is a rebuttable  
32 presumption that the employer owes the amount of wages alleged.

33 Upon issuing a decision finding wages due to a worker are equal  
34 to or greater than \$5,000, the commissioner must inform the  
35 employer that the commissioner will conduct an audit of the  
36 employer or any successor firm of the employer pursuant to section  
37 2 of P.L.2009, c.194 (C.34:1A-1.12), and notify the Division of  
38 Taxation of the decision and recommend that the division conduct  
39 an audit of the employer to ensure the proper withholding and  
40 payment of payroll and other taxes.

41 The bill further enhances enforcement procedures and remedies  
42 by extending certain remedies currently available to workers who  
43 are victims of violations of the State's minimum wage law to  
44 workers who are victims of violations of the State's wage payment  
45 laws. Specifically, the bill extends the remedies provided to  
46 employees by the minimum wage law in cases of employer  
47 retaliation to cover employer retaliation under the wage payment  
48 law, and provides the same opportunity for workers aggrieved by

1 violations of the wage payment law to bring a civil action as  
2 workers are provided for violations of the minimum wage law.

3 In addition, the bill provides the following two new remedies for  
4 violations of both the wage payment law and the minimum wage  
5 law:

6 1. The employee may bring the action in small claims court if  
7 the unpaid wages and damages do not exceed court jurisdictional  
8 limits; and

9 2. An employee who prevails in a civil action may recover  
10 liquidated damages equal to 200% of the unpaid wages.

11 The bill also amends section 2 of P.L.2009, c.194 (C.34:1A-  
12 1.12), which is the law that directs the commissioner, in the case of  
13 employers who fail to maintain required records and make required  
14 tax, benefit and wage payments, to conduct audits of employers and  
15 suspend or revoke business licenses of employers who are found in  
16 subsequent audits to have continued the violations. The bill amends  
17 that law to require the commissioner to use that law's remedies  
18 when notified by the Attorney General of a conviction under section  
19 10 of P.L.1999, c.90 (C.2C:40A-2). In addition, if an employer  
20 fails to comply with a final determination of the commissioner or a  
21 court judgement to pay wages owed or related damages within ten  
22 days, the commissioner may order license suspensions, or issue a  
23 stop work order, until the failure is corrected.

24 The bill makes a client employer and a labor contractor  
25 providing workers to the client employer subject to joint and several  
26 liability for violations of wage and hour laws. The bill provides  
27 that nothing in the bill shall be interpreted as restricting or limiting  
28 the rights of a client employer to recover from a labor contractor  
29 any expense to the client employer, or the rights of a labor  
30 contractor to recover from a client employer any expense to the  
31 labor contractor, or restricting or limiting the provisions in contracts  
32 between client employers and labor contractors regarding the  
33 recovery of expenses.

34 Because wage payment violations especially impact vulnerable  
35 employees such as day laborers and immigrants, who often suffer  
36 from low wages and the fear of retaliation, the bill's definitions of  
37 "employee" reaffirm that the protections of the State's wage and  
38 hour laws apply to all employees, with no exclusions based on  
39 citizenship status.

40 The bill directs the Department of Labor and Workforce  
41 Development to contract with community-based and legal services  
42 organizations to disseminate information to workers and assist  
43 workers aggrieved by violations of State wage and hour laws. The  
44 bill requires that the contracts provide that the organizations make  
45 all services accessible to persons with limited English proficiency  
46 and that, in any case in which the community-based or legal  
47 services organization assists or represents employees, 50% of any

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20

1 fees or penalties collected by the department be paid to the  
2 organization.

3 The bill requires employers to provide current and newly hired  
4 employees a written copy of the statement produced by the  
5 department of the employee's rights under the bill, with an  
6 explanation of how to file a claim or take other actions with regard  
7 to wage violations.

8 The bill requires the commissioner, in consultation with the  
9 Administrative Director of the Courts and the Attorney General, to  
10 produce an annual report on the enforcement of wage and hour laws  
11 with recommendations to improve enforcement, and place on a  
12 website information regarding each wage claim in which an  
13 employer was found to have been in violation of one or more State  
14 wage and hour laws during the preceding period of not less than 12  
15 months.

16 The bill exempts violations of the "New Jersey Prevailing Wage  
17 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), and "The Public  
18 Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-  
19 56.48 et seq.), from the remedies of the bill. The bill also exempts  
20 from its provisions construction industry employers and workers  
21 who have collective bargaining agreements. Finally, the bill  
22 expressly provides that violations of the building services prevailing  
23 wage law, P.L.2005, c.379 (C.34:11-56.58 et seq.), are subject to  
24 the remedies of the bill.