

[First Reprint]

**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 reported by the Senate Budget and Appropriations Committee on January 28, 2019, with amendments.



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 <sup>1</sup>[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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SBA committee amendments adopted January 28, 2019.

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)]<sup>1</sup>

22  
23 <sup>1</sup>**[2.] 1.** Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is  
24 amended to 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.

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 <sup>1</sup>[3.] <sup>2.1</sup> Section 10 of P.L.1965, c.173 (C.34:11-4.10) is  
37 amended to 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 'first'  
6 violation, shall be punished by a fine of not less than '[\$100]  
7 \$500' nor more than \$1,000 'or by imprisonment for not less than  
8 10 nor more than 90 days or by both the fine and imprisonment and,  
9 upon conviction for a second violation, be punished by a fine of not  
10 less than \$1,000 nor more than \$2,000 or by imprisonment for not  
11 less than 10 nor more than 100 days or by both the fine and  
12 imprisonment'. 'Upon conviction for a third or subsequent  
13 violation, an employer shall be guilty of a crime of the fourth  
14 degree and be punished by a fine of not less than \$2,000 nor more  
15 than \$10,000 or by imprisonment for up to 18 months or by both the  
16 fine and imprisonment.' Each 'week, in any' day '[during]' of'  
17 which any violation of [this act] article 1 of chapter 11 of Title 34  
18 of the Revised Statutes and all acts supplementing that article  
19 (R.S.34:11-2 et al.) continues shall constitute a separate and distinct  
20 offense. In the case of a discharge or other discriminatory action  
21 against the employee which is in violation of this subsection, the  
22 employer shall be required to offer reinstatement in employment to  
23 the discharged employee, unless the reinstatement is prohibited by  
24 law, and to correct the discriminatory action, and also to pay to the  
25 employee, in full, all wages lost as a result of that discharge or  
26 discriminatory action, plus any reasonable cost of the action, and  
27 liquidated damages equal to 200 percent of the wages due, under  
28 penalty of contempt proceedings. Taking an adverse action against  
29 an employee within ninety days of the employee filing a complaint  
30 with the commissioner for a violation of article 1 of chapter 11 of  
31 Title 34 of the Revised Statutes and all acts supplementing that  
32 article (R.S.34:11-2 et al.) shall raise a presumption that the action  
33 was a discriminatory action taken in retaliation, which may be  
34 rebutted only by clear and convincing evidence that the action was  
35 taken for other, permissible, reasons. An employee complaint or  
36 other communication need not make explicit reference to any  
37 section or provision of any State law regarding wages and 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.1965, c.173 (C.34:11-4.1 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

1 accordance with the "Administrative Procedure Act," P.L.1968,  
2 c.410 (C.52:14B-1 et seq.). When determining the amount of the  
3 penalty imposed because of a violation, the commissioner shall  
4 consider factors which include the history of previous violations by  
5 the employer, the seriousness of the violation, the good faith of the  
6 employer and the size of the employer's business. No  
7 administrative penalty shall be levied pursuant to this section unless  
8 the Commissioner of Labor and Workforce Development provides  
9 the alleged violator with notification of the violation and of the  
10 amount of the penalty by certified mail and an opportunity to  
11 request a hearing before the commissioner or his designee within 15  
12 days following the receipt of the notice. If a hearing is requested,  
13 the commissioner shall issue a final order upon such hearing and a  
14 finding that a violation has occurred. If no hearing is requested, the  
15 notice shall become a final order upon expiration of the 15-day  
16 period. Payment of the penalty is due when a final order is issued  
17 or when the notice becomes a final order. Any penalty imposed  
18 pursuant to this section may be recovered with costs in a summary  
19 proceeding commenced by the commissioner pursuant to **["the**  
20 **penalty enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty  
21 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
22 Any sum collected as a fine or penalty pursuant to this section shall  
23 be applied toward enforcement and administration costs of the  
24 Division of Workplace Standards in the Department of Labor and  
25 Workforce Development.

26 c. If any employer fails to pay the full amount of wages to an  
27 employee agreed to or required by, or in the manner required by,  
28 the provisions of article 1 of chapter 11 of Title 34 of the Revised  
29 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),  
30 the employee may recover in a civil action the full amount of any  
31 wages due, or any wages due because of any discriminatory action  
32 in violation of subsection a. of this section, plus an amount of  
33 liquidated damages equal to 200 percent of the wages due, together  
34 with costs and reasonable attorney's fees as are allowed by the  
35 court, except that if there is an agreement of the employee to accept  
36 payment of the unpaid wages supervised by the commissioner  
37 pursuant to section 9 of P.L.1965, c.173 (C.34:11-4.9) or R.S.34:11-  
38 58, the liquidated damages shall be equal to 200 percent of wages  
39 that were due prior to the supervised payment. Any agreement by  
40 the employee to work for, or accept, wages paid which are less than  
41 the amount agreed to or required by law, or paid in a manner other  
42 than that required by article 1 of chapter 11 of Title 34 of the  
43 Revised Statutes and all acts supplementing that article (R.S.34:11-  
44 2 et al.), shall be no defense to the action. The employee shall be  
45 entitled to maintain the action for and on behalf of other similarly  
46 situated employees, or designate an agent or representative to  
47 maintain the action for and on behalf of all similarly situated  
48 employees. The employee may bring the action to recover unpaid  
49 wages pursuant to this section in the Superior Court, and may bring  
50 the action in the Division of Small Claims of the Superior Court,



1 Law Division, Special Civil Part if the sum of the unpaid wages and  
2 the liquidated damages does not exceed the jurisdictional limits of  
3 the Division of Small Claims. Upon the request of any employee  
4 not paid the full wages agreed upon or required by law and in the  
5 manner required by the provisions of article 1 of chapter 11 of Title  
6 34 of the Revised Statutes and all acts supplementing that article  
7 (R.S.34:11-2 et al.), the commissioner may take an assignment of  
8 the wage claim in trust for the assigning employee and may bring  
9 any legal action necessary to collect the claim, and the employer  
10 shall be required to pay to the employee the unpaid wages and  
11 liquidated damages equal to 200 percent of the amount of the  
12 unpaid wages and pay to the commissioner the costs and reasonable  
13 attorney's fees as determined by the court.

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

15

16 <sup>1</sup>~~4.~~ 3.<sup>1</sup> Section 25 of P.L.1966, c.113 (C.34:11-56a24) is  
17 amended to read as follows:

18 25. a. Any employer who discharges or in any other manner  
19 discriminates against any employee because the employee has made  
20 any complaint to his employer, to the commissioner, the director or  
21 to their authorized representatives, or to a representative of the  
22 employee, that he has not been paid wages in accordance with the  
23 provisions of this act, or because such employee has caused to be  
24 instituted or is about to cause to be instituted any proceeding under  
25 or related to this act, or because such employee has testified or is  
26 about to testify in any such proceeding, or because such employee  
27 has served or is about to serve on a wage board, or because the  
28 employee has informed any person about rights under State laws  
29 regarding wages and hours of work, shall be guilty of a disorderly  
30 persons offense and shall, upon conviction therefor, be fined not  
31 less than ~~100~~ \$500<sup>1</sup> nor more than \$1,000 <sup>1</sup>or by imprisonment  
32 for not less than 10 nor more than 90 days or by both the fine and  
33 imprisonment and, upon conviction for a second violation, be  
34 punished by a fine of not less than \$1,000 nor more than \$2,000 or  
35 by imprisonment for not less than 10 nor more than 100 days or by  
36 both the fine and imprisonment<sup>1</sup>. <sup>1</sup>Upon conviction for a third or  
37 subsequent violation, an employer shall be guilty of a crime of the  
38 fourth degree and be punished by a fine of not less than \$2,000 nor  
39 more than \$10,000 or by imprisonment for up to 18 months or by  
40 both the fine and imprisonment.<sup>1</sup> Such employer shall be required,  
41 as a condition of such judgment of conviction, to offer  
42 reinstatement in employment to any such discharged employee,  
43 unless the reinstatement is prohibited by law, and to correct any  
44 such discriminatory action, and also to pay to any such employee in  
45 full, all wages lost as a result of such discharge or discriminatory  
46 action and an additional amount of liquidated damages equal to 200  
47 percent of the wages due, under penalty of contempt proceedings  
48 for failure to comply with such requirement. Taking an adverse  
49 action against an employee within ninety days of the employee

1 filing a complaint with the commissioner for a violation of  
2 P.L.1966, c.113 (C.34:11-56a et seq.) shall raise a presumption that  
3 the action was a discriminatory action taken in retaliation, which  
4 may be rebutted only by clear and convincing evidence that the  
5 action was taken for other, permissible, reasons. An employee  
6 complaint or other communication need not make explicit reference  
7 to any section or provision of State law regarding wages or hours  
8 worked to trigger the protections of this section.

9 b. As an alternative to or in addition to any other sanctions  
10 provided by law for violations of P.L.1966, c.113 (C.34:11-56a et  
11 seq.), when the Commissioner of Labor and Workforce  
12 Development finds that an employer has violated that act, or taken  
13 any discriminatory action against the employee in violation of  
14 subsection a. of this section, the commissioner is authorized to  
15 assess and collect administrative penalties, up to a maximum of  
16 \$250 for a first violation and up to a maximum of \$500 for each  
17 subsequent violation, specified in a schedule of penalties to be  
18 promulgated as a rule or regulation by the commissioner in  
19 accordance with the "Administrative Procedure Act," P.L.1968,  
20 c.410 (C.52:14B-1 et seq.). When determining the amount of the  
21 penalty imposed because of a violation, the commissioner shall  
22 consider factors which include the history of previous violations by  
23 the employer, the seriousness of the violation, the good faith of the  
24 employer and the size of the employer's business. No  
25 administrative penalty shall be levied pursuant to this section unless  
26 the Commissioner of Labor and Workforce Development provides  
27 the alleged violator with notification of the violation and of the  
28 amount of the penalty by certified mail and an opportunity to  
29 request a hearing before the commissioner or his designee within 15  
30 days following the receipt of the notice. If a hearing is requested,  
31 the commissioner shall issue a final order upon such hearing and a  
32 finding that a violation has occurred. If no hearing is requested, the  
33 notice shall become a final order upon expiration of the 15-day  
34 period. Payment of the penalty is due when a final order is issued  
35 or when the notice becomes a final order. Any penalty imposed  
36 pursuant to this section may be recovered with costs in a summary  
37 proceeding commenced by the commissioner pursuant to **["the**  
38 **penalty enforcement law" (N.J.S.2A:58-1 et seq.)]** the "Penalty  
39 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
40 Any sum collected as a fine or penalty pursuant to this section shall  
41 be applied toward enforcement and administration costs of the  
42 Division of Workplace Standards in the Department of Labor and  
43 Workforce Development.

44 (cf: P.L.1991, c.205, s.22)

45  
46 <sup>1</sup>**[5.] 4.**<sup>1</sup> Section 26 of P.L.1966, c.113 (C.34:11-56a25) is  
47 amended to read as follows:

1       26. If any employee is paid by an employer less than the  
2 minimum fair wage to which **[such]** the employee is entitled under  
3 the provisions of **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or  
4 by virtue of a minimum fair wage order **[such]**, the employee may  
5 recover in a civil action the full amount of **[such]** that minimum  
6 wage less any amount actually paid to him or her by the employer  
7 **[together with]** and an additional amount equal to 200 percent of  
8 the amount of the unpaid minimum wages as liquidated damages,  
9 plus costs and **[such]** reasonable attorney's fees as **[may be**  
10 allowed] determined by the court, **[and any]** except that if there is  
11 an agreement of the employee to accept payment of the unpaid  
12 wages or compensation supervised by the commissioner pursuant to  
13 section 24 of P.L.1966, c.113 (C.34:11-56a23) or R.S.34:11-58, the  
14 liquidated damages shall be equal to 200 percent of wages that were  
15 due prior to the supervised payment. Any agreement between  
16 **[such]** the employee and the employer to work for less than **[such]**  
17 the minimum fair wage shall be no defense to the action. An  
18 employee shall be entitled to maintain **[such]** the action for and on  
19 behalf of himself or other employees similarly situated, and **[such]**  
20 the employee and employees may designate an agent or  
21 representative to maintain **[such]** the action for and on behalf of all  
22 employees similarly situated. The employee may bring the action  
23 to recover unpaid minimum wages pursuant to this section in the  
24 Superior Court, and may bring the action in the Division of Small  
25 Claims of the Superior Court, Law Division, Special Civil Part if  
26 the sum of the amount of unpaid minimum wages and the amount of  
27 liquidated damages does not exceed the jurisdictional limits of the  
28 Division of Small Claims.

29       At the request of any employee paid less than the minimum wage  
30 to which **[such]** the employee was entitled under the provisions of  
31 **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or under an order,  
32 the commissioner may take an assignment of the wage claim in trust  
33 for the assigning employee and may bring any legal action  
34 necessary to collect the claim, and the employer shall be required to  
35 pay to the employee the unpaid wages and liquidated damages equal  
36 to 200 percent the amount of the unpaid wages and pay to the  
37 commissioner the costs and **[such]** reasonable attorney's fees as  
38 **[may be allowed]** determined by the court.  
39 (cf: P.L.1966, c.113, s.26)

40

41       <sup>1</sup>**[6.] 5.**<sup>1</sup> Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is  
42 amended to read as follows:

43       1. No claim for unpaid minimum wages, unpaid overtime  
44 compensation, or other damages under this act shall be valid with  
45 respect to any such claim which has arisen more than **[2]** six years  
46 prior to the commencement of an action for the recovery thereof. In

1 determining when an action is commenced, the action shall be  
2 considered to be commenced on the date when a complaint is filed  
3 with the Commissioner of the Department of Labor and **[Industry]**  
4 Workforce Development or the Director of **[the]** Wage and Hour  
5 **[Bureau]** Compliance, and notice of such complaint is served upon  
6 the employer; or, where an audit by the Department of Labor and  
7 **[Industry]** Workforce Development discloses a probable cause of  
8 action for unpaid minimum wages, unpaid overtime compensation,  
9 or other damages, and notice of such probable cause of action is  
10 served upon the employer by the Director of **[the]** Wage and Hour  
11 **[Bureau]** Compliance; or where a cause of action is commenced in  
12 a court of appropriate jurisdiction.  
13 (cf: P.L.1967, c.216, s.1)  
14

15 <sup>1</sup>**[7.] 6.** R.S.34:11-57 is amended to read as follows:

16 34:11-57. As used in this article:

17 "Commissioner" means the Commissioner of Labor and  
18 **[Industry]** Workforce Development or any person or persons in the  
19 department designated in writing by him for the purposes of this  
20 article.

21 "Community-based organization" means a public, or nonprofit  
22 private, organization funded with public or private funds, or both,  
23 that provides services to day laborers, migrant laborers, temporary  
24 laborers, low wage workers, or any other type of employee.

25 "Department" means the Department of Labor and Workforce  
26 Development.

27 "Employee" means any natural person who works for another for  
28 hire.

29 "Employer" means any person, partnership, firm or corporation  
30 employing another for hire.

31 "Legal services organization" means a public, or nonprofit  
32 private, organization funded with public or private funds, or both,  
33 that provides counseling or advice related to wage protection laws,  
34 preparation of legal documents, or representation of any person  
35 before a court or administrative agency.

36 "State wage and hour laws" means article 1 of chapter 11 of Title  
37 34 of the Revised Statutes and all acts supplementing that article  
38 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that  
39 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),  
40 and article 3 of chapter 11 of Title 34 of the Revised Statutes  
41 (R.S.34:11-57 et seq.), but "State wage and hour laws" do not  
42 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150  
43 (C.34:11-56.25 et seq.), or "The Public Works Contractor  
44 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

45 "Wages" means any moneys due an employee from the employer  
46 whether payable by the hour, day, week, semimonthly, monthly or

1 yearly and shall include commissions, bonus, piecework  
2 compensation and any other benefits arising out of an employment  
3 contract.

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

5

6 <sup>1</sup>~~【8.】~~ 7.<sup>1</sup> R.S.34:11-58 is amended to read as follows:

7 34:11-58. a. An employee may file a claim for wages against  
8 an employer under this section or any of the other State wage and  
9 hours laws for wages owed related to work performed up to six  
10 years prior to the date the claim for wages is filed.

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

14 c. The commissioner is authorized and empowered to  
15 investigate any claim for wages due an employee and in such  
16 investigation may summon the defendant, subpoena witnesses,  
17 administer oaths, take testimony and shall upon such proceeding  
18 make a decision or award ~~【when the sum in controversy, exclusive~~  
19 ~~of costs, does not exceed \$30,000.00】~~ <sup>1</sup>when the sum in  
20 controversy, exclusive of costs, does not exceed \$50,000<sup>1</sup>.

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

23 Such judgment shall be entered in the same manner and have the  
24 same effect and be subject to the same proceedings as are  
25 judgments rendered in suits duly heard and determined by courts of  
26 competent jurisdiction.

27 d. Upon an investigation of a wage claim initiated pursuant to  
28 this section or any of the other State wage and hours laws, if an  
29 employer fails to provide sufficient employee records, as required  
30 to be kept under any State wage and hour laws, there shall be a  
31 rebuttable presumption that the employee worked for the employer  
32 for the period of time and for the amount of wages as alleged in the  
33 wage claim. <sup>1</sup>The rebuttable presumption shall not apply to an  
34 employer that can demonstrate it does not have sufficient employee  
35 records as a result of record destruction due to a natural disaster.<sup>1</sup>

36 e. The commissioner is authorized to supervise the payment of  
37 amounts, including liquidated damages, due to employees under an  
38 award made pursuant to this section, and the employer may be  
39 required to make these payments to the commissioner to be held in  
40 a special account in trust for the employees, and paid on order of  
41 the commissioner directly to the employee or employees affected.  
42 The employer shall also pay the commissioner an administrative fee  
43 equal to not less than 10% or more than 25% of any payment made  
44 to the commissioner pursuant to this section. The amount of the  
45 administrative fee shall be specified in a schedule of fees to be  
46 promulgated by rule or regulation of the commissioner in  
47 accordance with the "Administrative Procedure Act," P.L.1968,

1 c.410 (C.52:14B-1 et seq.). The fee shall be applied to enforcement  
2 and administration costs of the Division of Workplace Standards in  
3 the Department of Labor and Workforce Development.

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

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

12 (2) notify the Division of Taxation in the Department of the  
13 Treasury of the decision and recommend that the division conduct  
14 an audit of the employer to ensure the proper withholding and  
15 payment of payroll and other taxes by the employer.

16 g. No payment of an amount of wages owed or related  
17 damages, including wages or damages related to retaliation, shall be  
18 required under the provision of this section, or under the provisions  
19 of any of the other State wage and hour laws, which results in a  
20 violation paying wages owed or damages more than one time for the  
21 same violation.

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

23

24 <sup>1</sup>[9.] g.<sup>1</sup> (New section) a. If an employer fails to comply with  
25 a final determination of the commissioner or a judgment of a court,  
26 including a small claims court, made under the provisions of State  
27 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40-2),  
28 to pay an employee any wages owed or damages awarded within ten  
29 days of the time that the determination or judgement requires the  
30 payment, the commissioner may do either or both of the following:

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

36 (2) issue a stop work order against the violators requiring the  
37 cessation of all business operations of the violator. The stop work  
38 order may only be issued against the individual or entity found to be  
39 in violation, and only as to the specific place of business or  
40 employment for which the violation exists. The stop work order  
41 shall be effective when served upon the violator or at a place of  
42 business or employment by posting a copy of the stop work order in  
43 a conspicuous location at the place of business or employment. The  
44 stop work order shall remain in effect until the commissioner issues  
45 an order releasing the stop work order upon a finding that the  
46 violation has been corrected. As a condition of release of a stop-  
47 work order under this section, the commissioner may require the  
48 employer against whom the stop-work order had been issued to file

1 with the department periodic reports for a probationary period of  
2 two years.

3 b. Stop work orders and any penalties imposed under a stop  
4 work order against a corporation, partnership, or sole proprietorship  
5 shall be effective against any successor entity that has one or more  
6 of the same principals or officers as the corporation, partnership, or  
7 sole proprietorship against which the stop work order was issued  
8 and that is engaged in the same or equivalent trade or activity.

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

12 d. A rebuttable presumption that an employer has established a  
13 successor entity shall arise if the two share at least <sup>1</sup>~~three~~ two<sup>1</sup> of  
14 the following capacities or characteristics:

15 (1) perform similar work <sup>1</sup>within the same geographical area<sup>1</sup>;

16 (2) occupy the same premises;

17 (3) have the same telephone or fax number;

18 (4) have the same email address or Internet website;

19 (5) <sup>1</sup>~~perform work in the same geographical area;~~

20 (6) <sup>1</sup>~~employ substantially the same work force~~<sup>1</sup>, administrative  
21 employees, or both<sup>1</sup>;

22 (7) utilize the same tools <sup>1</sup>~~and~~<sup>1</sup>, facilities, or<sup>1</sup> equipment;

23 (8) employ or engage the services of any person or persons  
24 involved in the direction or control of the other; or

25 (9) list substantially the same work experience.

26

27 <sup>1</sup>~~10.~~ 9.<sup>1</sup> (New section) a. A client employer and a labor  
28 contractor providing workers to the client employer shall be subject  
29 to joint and several liability and shall share civil legal responsibility  
30 for any violations of the provisions of State wage and hour laws or  
31 violations of the provisions of section 10 of P.L.1999, c.90  
32 (C.2C:40A-2) regarding compliance with State wage and hour laws,  
33 including provisions regarding retaliatory actions against employees  
34 for exercising their rights under any of those laws, and both may be  
35 subject to any remedy provided for violations of those laws. A  
36 client employer shall not shift to the labor contractor any legal  
37 duties or liabilities under the provisions of the “Worker Health and  
38 Safety Act,” P.L.1965, c.154 (C.34:6A-1 et seq.) or “The Worker  
39 and Community Right to Know Act,” P.L.1983, c.315 (C.34:5A-1  
40 et seq.) with respect to workers supplied by the labor contractor. A  
41 waiver of the provisions of this section is contrary to public policy,  
42 and is void and unenforceable.

43 b. This section shall not be interpreted as:

44 (1) imposing individual liability on a homeowner for labor or  
45 services received at the home or the owner of a home-based  
46 business for labor or services received at the home; or

1 (2) restricting or limiting the rights of a client employer to  
2 recover from a labor contractor any expense to the client employer,  
3 or the rights of a labor contractor to recover from a client employer  
4 any expense to the labor contractor, resulting from any violation by  
5 the labor contractor or client employer of the provisions of State  
6 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-  
7 2), or restricting or limiting the provisions in contracts between  
8 client employers and labor contractors regarding the recovery of  
9 expenses pursuant to this paragraph.

10 c. As used in this section:

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

15 “Labor contractor” means any individual or entity that supplies,  
16 either with or without a contract, directly or indirectly, a client  
17 employer with workers to perform labor or services within the  
18 client employer’s usual course of business, except that “labor  
19 contractor” does not include a bona fide labor organization or  
20 apprenticeship program, or a hiring hall operated pursuant to a  
21 collective bargaining agreement.

22 “Usual course of business” means the regular and customary  
23 work of a business, performed within or upon the premises or  
24 worksite of the client employer, or any other place of business of  
25 the client employer for which services or labor are performed.

26  
27 <sup>1</sup>**[11.] 10.**<sup>1</sup> (New section) Each employer shall provide each  
28 current employee and each newly hired employee of the employer, a  
29 written copy of the statement produced by the department pursuant  
30 to subsection c. of section 12 of P.L. , c. (C. ) (pending before  
31 the Legislature as this bill) of the employee’s rights under the  
32 provisions of State wage and hour laws and the provisions of  
33 section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation of  
34 how to file a claim or take an action pursuant to those laws.

35  
36 <sup>1</sup>**[12.] 11.**<sup>1</sup> (New section) The department, for the purpose of  
37 supporting the enforcement of the provisions of State wage and  
38 hour laws and the provisions of section 10 of P.L.1999, c.90  
39 (C.2C:40A-2), shall:

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

46 b. contract with community-based organizations and legal  
47 services organizations to investigate, prepare, and if necessary,  
48 represent employees in actions under State wage and hour laws or



1 section 10 of P.L.1999, c.90 (C.2C:40A-2), including actions under  
2 those laws concerning retaliation against employees; and

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

8 The contracts entered into between the department and  
9 community-based organizations and legal services organizations  
10 pursuant to this section shall require that the organizations make all  
11 services accessible to persons with limited English proficiency and  
12 shall provide that, in any case in which the community-based or  
13 legal services organization assists or represents employees pursuant  
14 to subsection b. of this section, 50 percent of any fees or penalties  
15 collected by the department shall be paid to the organization for  
16 services provided pursuant to contracts entered into pursuant to this  
17 section, and that payment shall be regarded as an enforcement and  
18 administrative cost of the Division of Workplace Standards of the  
19 department.

20 The department, and any community-based organization or legal  
21 services organization contracting with the department pursuant to  
22 this section, shall provide any individual seeking assistance to file a  
23 complaint or take an action regarding unpaid wages with a  
24 description of all of the applicable remedies available to the  
25 individual under State wage and hour laws and section 10 of  
26 P.L.1999, c.90 (C.2C:40A-2), including the individual's right to  
27 obtain liquidated damages, and that that right to damages is waived  
28 if the individual agrees to accept payment of the unpaid wages  
29 supervised by the commissioner.

30

31 <sup>1</sup>~~13.~~ 12.<sup>1</sup> (New section) a. The commissioner, in consultation  
32 with the Administrative Director of the Courts and the Attorney  
33 General, shall compile and prominently place on a website,  
34 maintained by the department and available to the public, an annual  
35 report evaluating the effectiveness and efficiency of the  
36 enforcement and administration of wage claims and wage  
37 collections. The report shall include, but not be limited to:

38 (1) the number of complaints, investigations, prosecutions,  
39 dispositions, and business license suspensions and revocations, the  
40 number and amount of penalties, the amount of wages recovered,  
41 and the number of workers effected;

42 (2) an enumeration and description of all community-based and  
43 legal services organizations contracted by the department to support  
44 the enforcement; and

45 (3) recommendations for strengthening the implementation and  
46 enforcement of P.L. , c. (C. ) (pending before the  
47 Legislature as this bill).

1       b. The commissioner, in consultation with the Administrative  
2 Director of the Courts and the Attorney General, shall compile and  
3 prominently place on a website, maintained by the department and  
4 available to the public, the following information regarding each  
5 wage claim in which an employer was found to have been in  
6 violation of one or more State wage and hour laws in a final  
7 determination by the commissioner or a judgement of a court made  
8 during the preceding period of not less than 12 months:

- 9       (1) the name and address of the employer;  
10       (2) the nature of the claim, including whether it is a claim for  
11 one or more of the following: unpaid wages; failure to pay the  
12 minimum wage; failure to pay required overtime; or retaliation  
13 against an employee in connection with State wage and hour laws;  
14       (3) the number of affected employees, and the amount of wages  
15 found owed; and  
16       (4) any findings, penalties, and business license suspensions or  
17 revocations that resulted from the wage claim.

18       The information on a claim shall be placed on the website not  
19 more than 30 days after the final determination or judgement is  
20 made.

21

22       <sup>1</sup>**[14.]** 13.<sup>1</sup> This act shall take effect immediately.