

SENATE LABOR COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 4204

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2019

The Senate Labor Committee reports favorably, and with committee amendments, Senate Bill No. 4204.

As amended by the committee, the bill provides that, for the purposes of all State employment laws, individuals who are suffered or permitted to work are employees, not independent contractors, and are subject to the provisions of those laws, and entitled to all remedies for any violations of those laws, unless and until it is shown to the satisfaction of the Commissioner that:

a. The individual has been and will continue to be free from control or direction over the performance of the service, both under the individual's contract of service and in fact; and

b. The individual's service is either outside the usual course of the business for which that service is performed, or the work is performed outside of all the places of business of the enterprise for which the service is performed; and

c. The individual is customarily engaged in an independently established business or enterprise of the same nature as that involved in the work performed.

The bill defines "State wage and hour laws" as Article 1 of chapter 11 of Title 34 of the Revised Statutes and all acts supplementing that article (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.), and Article 3 of chapter 11 of Title 34 of the Revised Statutes (R.S.34:11-57 et seq.). The bill, however, excludes from that definition the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), and the "Construction Industry Independent Contractor Act," P.L. 2007, c.114 (C.34:20-1 et seq.).

In addition, the bill modifies the similar "a.b.c." test in the State "unemployment compensation law" (R.S.43:21-1 et seq.), and the "Construction Industry Independent Contractor Act," P.L. 2007, c.114 (C.34:20-1 et seq.), both of which currently provide that service

performed by an individual is not regarded as an employment subject to that law if:

a. The individual has been and will continue to be free from control or direction over the performance of the service, both under his contract of service and in fact; and

b. The individual's service is either outside the usual course of the business for which the service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

c. The individual is customarily engaged in an independently established trade, occupation, profession or business.

The bill modifies the "c." criteria of the "a.b.c." test in those laws from covering an individual customarily engaged in "an independently established trade, occupation, profession or business," to instead covering an individual customarily engaged in "an independently established business or enterprise of the same nature as that involved in the work performed."

Committee Amendments:

The amendments adopted by the committee modify the "a.b.c." test criteria by: adding to the "b." criteria that the work "is performed outside of all the places of business of the employer for which the service is performed"; and changing the "c." criteria from covering an individual customarily engaged in "an independently established trade, occupation, profession or business," to covering an individual customarily engaged in "an independently established business or enterprise of the same nature as that involved in the work performed."