

ASSEMBLY, No. 5890

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 9, 2021

Sponsored by:

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

SYNOPSIS

Concerns enforcement of employee misclassification and stop-work order laws.

CURRENT VERSION OF TEXT

As introduced.



A5890 VERRELLI

2

1 AN ACT concerning enforcement of various laws regarding
2 employee misclassification and stop-work orders, and amending
3 various parts of the statutory law.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.2019, c.194 (C.34:1A-1.11) is amended to
9 read as follows:

10 1. As used in this act:

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

14 "Commissioner" means the Commissioner of Labor and
15 Workforce Development, and shall include any designee, authorized
16 representative, or agent acting on behalf of the commissioner.

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

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

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

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

27 (4) A certificate of limited partnership or a certificate of
28 authority pursuant to the "Uniform Limited Partnership Law
29 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

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

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

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (4) The workers' compensation law, R.S.34:15-1 et seq.;
- 2 (5) The "unemployment compensation law," R.S.43:21-1 et seq.;
- 3 (6) The "Temporary Disability Benefits Law," P.L.1948, c.110
- 4 (C.43:21-25 et al.);
- 5 (7) P.L.2008, c.17 (C.43:21-39.1 et al.); **[and]**
- 6 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
- 7 seq.; and
- 8 (9) P.L.2018, c.10 (C.34:11D-1 et seq.).
- 9 (cf: P.L.2009, c.194, s.1)

10

11 2. Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to

12 read as follows:

13 2. a. (1) If the commissioner determines that an employer has

14 **[failed, for one or more of its employees, to maintain and report**

15 every record regarding wages, benefits and taxes which the

16 employer is required to maintain and report pursuant to State wage,

17 benefit and tax laws, as defined in section 1 of this act, and has, in

18 connection with that failure to maintain or report the records, failed

19 to pay wages, benefits, taxes or other contributions or assessments

20 as required by those laws] violated any State wage, benefit and tax

21 law, including but not limited to a violation of R.S.34:15-79, or

22 failed to meet obligations required by R.S.43:21-7 or R.S.43:21-14,

23 or violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or

24 P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner shall, as an

25 alternative to, or in addition to, any other actions taken in the

26 enforcement of those laws, notify the employer of the determination

27 and have an audit of the employer and any successor firm of the

28 employer conducted not more than 12 months after the

29 determination.

30 (2) If the commissioner is notified pursuant to subsection g. of

31 this section of a

32 conviction of an employer, the commissioner shall, as an alternative

33 to, or in addition to, any other actions taken in the enforcement of

34 the laws violated by the employer, have an audit of the employer

35 and any successor firm of the employer conducted not more than 12

36 months after receipt of the notification.

37 b. If, in an audit conducted pursuant to subsection a. of this

38 section, the commissioner determines that the employer or any

39 successor firm to the employer has continued in its failure to

40 maintain or report records as required by those laws or continued in

41 its failure to pay wages, benefits, taxes or other contributions or

42 assessments as required by those laws, or if the commissioner is

43 notified pursuant to subsection g. of this section of a conviction of

44 the employer and the offense resulting in the conviction occurred

45 subsequent to an audit conducted pursuant to subsection a. of this

46 section, the commissioner:

A5890 VERRELLI

- 1 (1) May, after affording the employer or successor firm notice
2 and an opportunity for a hearing in accordance with the provisions
3 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
4 1 et seq.), issue a written determination directing any appropriate
5 agency to suspend any one or more licenses that are held by the
6 employer or successor firm, for a period of time determined by the
7 commissioner. In determining the length of a suspension, the
8 commissioner shall consider any of the following factors which are
9 relevant:
- 10 (a) The number of employees for which the employer or
11 successor firm failed to maintain or report required records and pay
12 required wages, benefits, taxes or other contributions or
13 assessments;
- 14 (b) The total amount of wages, benefits, taxes or other
15 contributions or assessments not paid by the employer or successor
16 firm;
- 17 (c) Any other harm resulting from the violation;
- 18 (d) Whether the employer or successor firm made good faith
19 efforts to comply with any applicable requirements;
- 20 (e) The duration of the violation;
- 21 (f) The role of the directors, officers or principals of the
22 employer or successor firm in the violation;
- 23 (g) Any prior misconduct by the employer or successor firm;
24 and
- 25 (h) Any other factors the commissioner considers relevant; and
- 26 (2) Shall conduct a subsequent audit or inspection of the
27 employer or any successor firm of the employer not more than 12
28 months after the date of the commissioner's written determination.
- 29 c. If, in the subsequent audit or inspection conducted pursuant
30 to subsection b. of this section, the commissioner determines that
31 the employer or successor firm has continued in its failure to
32 maintain or report records as required pursuant to State wage,
33 benefit and tax laws, as defined in section 1 of this act, and
34 continued in its failure to pay wages, benefits, taxes or other
35 contributions or assessments as required by those laws, or if the
36 commissioner is notified pursuant to subsection g. of this section of
37 a conviction of the employer for an offense occurring after the audit
38 conducted pursuant to subsection b. of this section, the
39 commissioner, after affording the employer or successor firm notice
40 and an opportunity for a hearing in accordance with the provisions
41 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
42 1 et seq.), shall issue a written determination directing any
43 appropriate agency to permanently revoke any one or more licenses
44 that are held by the employer or any successor firm to the employer
45 and that are necessary to operate the employer or successor firm.
- 46 d. Upon receipt of any written determination of the
47 commissioner directing an agency to suspend or revoke a license

1 pursuant to this section, and notwithstanding any other law, the
2 agency shall immediately suspend or revoke the license.

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

21 f. If, in the course of an audit or inspection conducted pursuant
22 to this section, the commissioner discovers that an employee of the
23 employer or of any successor firm of the employer has failed to
24 provide compensation to the employee as required under any of the
25 State wage and hour laws as defined in R.S.34:11-57, then the
26 commissioner shall initiate a wage claim on behalf of the employee
27 pursuant to R.S.34:11-58.

28 g. Upon the conviction of an employer under subsection a. of
29 section 10 of P.L.1999, c.90 (C.2C:40A-2), section 13 of P.L.2019,
30 c.212 (C.34:11-58.6), subsection a. of section 10 of P.L.1965, c.173
31 (C.34:11-4.10), subsection a. of section 25 of P.L.1966, c.113
32 (C.34:11-56a24), or N.J.S.2C:20-2 if the property stolen consists of
33 compensation the employer failed to provide to an employee under
34 any State wage and hour law as defined in R.S.34:11-57, the
35 prosecutor or the court shall notify the commissioner of the
36 employer's conviction.

37 h. In the alternative to proceedings under the "Administrative
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in accordance
39 with the provisions of subsection b. of this section, and in addition
40 to any other actions taken in the enforcement of the laws violated
41 by any employer, the commissioner shall have the authority, to be
42 exercised in the commissioner's sole discretion, to bring
43 enforcement actions for any violation of any State wage, benefit and
44 tax law, including but not limited to a violation of R.S.34:15-79, or
45 a failure to meet obligations required by R.S.43:21-7 or R.S.43:21-
46 14, or for a violation of any provision of P.L.1940, c.153 (C.34:2-
47 21.1 et seq.) or P.L.1989, c.293 (C.34:15C-1 et al.), in the Office of
48 Administrative Law or in the Superior Court for the county in

1 which the violation occurred. When the commissioner, including
2 any of the commissioner's authorized representatives in the Office
3 of the Attorney General, brings an action in the Office of
4 Administrative Law or Superior Court which seeks relief on behalf
5 of any individual for any of the above violations, communications
6 between members of the Attorney General's office and that
7 individual shall be privileged as would be a communication
8 between an attorney and a client.

9 i. In any enforcement action brought under subsection h. of
10 this section, the commissioner, including any of the commissioner's
11 authorized representatives in the Office of the Attorney General,
12 may initiate the action by making, signing, and filing a verified
13 complaint against the employer. If the action is brought by the
14 commissioner in Superior Court, a jury trial may be requested upon
15 the application of any party. If the commissioner is a prevailing
16 plaintiff in the action, any and all remedies available by law shall be
17 available on behalf of any named or unnamed victims as if the
18 claims were brought directly by the victims. In addition to any
19 remedies sought on behalf of the named or unnamed victims, the
20 commissioner shall be entitled to seek any fines, penalties or
21 administrative assessments authorized by law, including but not
22 limited to penalties for misclassification set forth in section 1 of
23 P.L.2019, c.373 (C.34:1A-1.18). If the suit seeks relief for one or
24 more unnamed members of a class, the commissioner shall have the
25 discretion to settle the suit on the terms the commissioner deems
26 appropriate. If the commissioner is a prevailing plaintiff, the court
27 shall award reasonable attorney's fees and litigation and
28 investigation costs.

29 j. At any time after the filing of any verified complaint under
30 subsection i. of this section, or whenever it appears to the
31 commissioner that an employer has engaged in, is engaging in, or is
32 about to engage in, any violation of a State wage, benefit or tax law,
33 including a violation of R.S.34:15-79 or any failure to meet
34 obligations required by R.S.43:21-7 or R.S.43:21-14, or has
35 violated any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or
36 P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may proceed
37 against the employer in a summary manner in the Superior Court of
38 New Jersey to obtain an injunction prohibiting the employer from
39 continuing or engaging in the violation or doing any acts in
40 furtherance of the violation, to compel compliance with any of the
41 provisions of this Title, or to prevent violations or attempts to
42 violate any of those provisions, or attempts to interfere with or
43 impede the enforcement of those provisions or the exercise or
44 performance of any power or duty under this Title. Prospective
45 injunctive relief against an employer shall also be available as a
46 remedy to the commissioner as a prevailing plaintiff in any
47 enforcement action under subsection i. of this section.

48 (cf: P.L.2019, c.212, s.1)

1 3. Section 1 of P.L.2019, c.372 (C.34:1A-1.17) is amended to
2 read as follows:

3 1. a. The Commissioner of Labor and Workforce Development
4 and any agent of the commissioner, upon receipt of a complaint or
5 through routine investigation for a violation of any State wage,
6 benefit and tax law, including but not limited to a violation of
7 R.S.34:15-79, or a failure to meet obligations required by
8 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of
9 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-
10 1 et al.), is authorized to enter, during usual business hours, the
11 place of business or employment of any employer of the individual
12 to determine compliance with those laws, and for that purpose may
13 examine payroll and other records and interview employees, call
14 hearings, administer oaths, take testimony under oath and take
15 interrogatories and oral depositions.

16 b. The commissioner may issue subpoenas for the attendance
17 of witnesses and the production of books and records. Any
18 **【employer or agent of the employer who willfully】** entity that fails
19 to furnish **【time and wage records as required by law to】**
20 information required by to the commissioner or agent of the
21 commissioner upon request, or who refuses to admit the
22 commissioner or agent to the place of employment of the employer,
23 or who hinders or delays the commissioner or agent in the
24 performance of duties in the enforcement of this section, may be
25 fined not less than \$1,000 and shall be guilty of a disorderly persons
26 offense. Each day of the failure to furnish the records to the
27 commissioner or agent shall constitute a separate offense, and each
28 day of refusal to admit, of hindering, or of delaying the
29 commissioner or agent shall constitute a separate offense.

30 In addition to the foregoing fines, and in addition to or as an
31 alternative to any criminal proceedings, if an entity fails to comply
32 with any subpoena lawfully issued, or upon the refusal of any
33 witness to testify to any matter regarding which the witness may be
34 lawfully interrogated, the commissioner may apply to the Superior
35 Court to compel obedience by proceedings for contempt, in the
36 same manner as in a failure to comply with the requirements of a
37 subpoena issued from the court or a refusal to testify in the court.

38 c. (1) If the commissioner determines, after either an initial
39 determination as a result of an audit of a business or an
40 investigation pursuant to subsection a. of this section, that an
41 employer is in violation of any State wage, benefit and tax law,
42 including but not limited to a violation of R.S.34:15-79, or a failure
43 to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for
44 a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.)
45 or P.L.1989, c.293 (C.34:15C-1 et al.), the commissioner may issue
46 a stop-work order against the employer requiring cessation of all
47 business operations of the employer at **【the specific place of**

1 business or employment in which the violation exists] one or more
2 worksites or across all of the employer's worksites and places of
3 business. The stop-work order may be issued only against the
4 employer found to be in violation or non-compliance. The
5 commissioner shall serve a notification of intent to issue a stop-
6 work order on the employer at the place of business or, for a
7 particular employer worksite, at that worksite at least seven days
8 prior to the issuance of a stop-work order. The order shall be
9 effective when served upon the employer at the place of business
10 or, for a particular employer worksite, when served at that worksite.
11 The order shall remain in effect until the commissioner issues an
12 order releasing the stop-work order upon finding that the employer
13 has come into compliance and has paid any penalty deemed to be
14 satisfactory to the commissioner, or after the commissioner
15 determines, in a hearing held pursuant to paragraph (2) of this
16 subsection, that the employer did not commit the act on which the
17 order was based. The stop-work order shall be effective against any
18 successor entity engaged in the same or equivalent trade or activity
19 that has one or more of the same principals or officers as the
20 corporation, partnership, limited liability company, or sole
21 proprietorship against which the stop-work order was issued. The
22 commissioner may assess a civil penalty of \$5,000 per day against
23 an employer for each day that it conducts business operations that
24 are in violation of the stop-work order. A request for hearing shall
25 not automatically stay the effect of the order.

26 (2) An employer who is subject to a stop-work order shall,
27 within 72 hours of its receipt of the notification, have the right to
28 appeal to the commissioner in writing for an opportunity to be heard
29 and contest the stop-work order.

30 Within seven business days of receipt of the notification from the
31 employer, the commissioner shall hold a hearing to allow the
32 employer to contest the issuance of a stop-work order. The
33 department and the employer may present evidence and make any
34 arguments in support of their respective positions on the imposition
35 of the misclassification penalty. If a hearing is not held within
36 seven business days of receipt of the notification from the
37 employer, an administrative law judge shall have the authority to
38 release the stop-work order. The commissioner shall issue a written
39 decision within five business days of the hearing either upholding
40 or reversing the employer's stop-work order. The decision shall
41 include the grounds for upholding or reversing the employer's stop-
42 work order. If the employer disagrees with the written decision, the
43 employer may appeal the decision to the commissioner, in
44 accordance with the "Administrative Procedure Act," P.L.1968,
45 c.410 (C.52:14B-1 et seq.).

46 If the employer does not request an appeal to the commissioner
47 in writing, the stop-work order shall become a final order after the
48 expiration of the 72-hour period. The authority to assess a civil

1 penalty under paragraph (1) of this subsection shall be in addition to
2 any misclassification penalty assessed under section 1 of P.L.2019,
3 C.373 (C.34:1A-1.18) and all other enforcement provisions or
4 assessments issued for the employer's violation of any State wage,
5 benefit and tax law, including but not limited to a violation of
6 R.S.34:15-79, or a failure to meet obligations required by
7 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of
8 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-
9 1 et al.) The commissioner may set any civil penalty assessed under
10 this section in an amount the commissioner determines to be
11 appropriate.

12 Once the stop-work order becomes final, any employee affected
13 by a stop-work order issued pursuant to this section shall be entitled
14 to pay from the employer for the first ten days of work lost because
15 of the stop-work. Upon request of any employee not paid wages,
16 the commissioner can take assignment of the claim and bring any
17 legal action necessary to collect all that is due.

18 (3) As an alternative to issuing a stop-work order in accordance
19 with paragraph (1) of this subsection, if the commissioner
20 determines, after an investigation pursuant to subsection a. of this
21 section, that an employer is in violation of R.S.34:15-79, the
22 commissioner may provide and transfer all details and materials
23 related to the investigation under this section to the Director of the
24 Division of Workers' Compensation for any enforcement of
25 penalties or stop-work orders the director determines are
26 appropriate.

27 d. For purposes of this section:

28 "Employer" means any individual, partnership, association, joint
29 stock company, trust, corporation, the administrator or executor of
30 the estate of a deceased individual, or the receiver, trustee, or
31 successor of any of the same, employing any person in this State.
32 For the purposes of this subsection the officers of a corporation and
33 any agents having the management of such corporation shall be
34 deemed to be the employers of the employees of the corporation. In
35 addition, any members of a partnership or limited liability company
36 and any agents having the management of such partnership or
37 limited liability company shall be deemed to be employers of the
38 employees of the partnership or limited liability company.

39 "Employee" means any person suffered or permitted to work by
40 an employer, except a person performing services for remuneration
41 whose services satisfy the factors set forth in subparagraphs
42 (A),(B), and (C) of R.S.43:21-19(i)(6).

43 "Employ" means to suffer or permit to work.

44 "State wage, benefit and tax laws" means "State wage, benefit
45 and tax laws" as defined in section 1 of P.L.2009, c.194 (C.34:1A-
46 1.11).

47 e. Nothing in this section shall preclude an employer from
48 seeking injunctive relief from a court of competent jurisdiction if

1 the employer can demonstrate that the stop-work order would be
2 issued or has been issued in error.

3 (cf: P.L.2019, c.372, s.1)

4

5 4. Section 2 of P.L.2019, c.158 (C.34:20-7.1) is amended to
6 read as follows:

7 2. a. The Commissioner of Labor and Workforce Development
8 and any agent of the commissioner, upon receipt of a complaint or
9 through a routine investigation for a violation of any **【**wage and
10 hour law or **】** State wage, benefit and tax law, as defined in section 1
11 of P.L.2009, c.194 (C.34:1A-1.11), including but not limited to a
12 violation of R.S.34:15-79, or a failure to meet obligations as
13 provided in R.S.43:21-7 and R.S.43:21-14, or for a violation of any
14 provision of P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989,
15 c.293 (C.34:15C-1 et al.), is authorized to enter, during usual
16 business hours, the place of business or employment of any
17 employer of the individual to determine compliance with the wage
18 and hour laws, R.S.34:15-79, R.S.43:21-7, or R.S.43:21-14, and for
19 that purpose may examine payroll and other records and interview
20 employees, call hearings, administer oaths, take testimony under
21 oath and take interrogatories and oral depositions.

22 b. The commissioner may issue subpoenas for the attendance
23 of witnesses and the production of books and records. Any
24 **【**employer or agent of the employer who willfully **】** entity that fails
25 to furnish **【**time and wage records as required by law to **】**
26 information required by the commissioner or agent of the
27 commissioner upon request, or who refuses to admit the
28 commissioner or agent to the place of employment of the employer,
29 or who hinders or delays the commissioner or agent in the
30 performance of duties in the enforcement of this section, may be
31 fined not less than \$1,000 and shall be guilty of a disorderly persons
32 offense. Each day of the failure to furnish the time and wage
33 records to the commissioner or agent shall constitute a separate
34 offense, and each day of refusal to admit, of hindering, or of
35 delaying the commissioner or agent shall constitute a separate
36 offense.

37 In addition to the foregoing fines, and in addition to or as an
38 alternative to any criminal proceedings, if an entity fails to comply
39 with any lawfully issued subpoena, or upon the refusal of any
40 witness to testify to any matter regarding which the witness may be
41 lawfully interrogated, the commissioner or the commissioner's
42 designee may apply to the Superior Court to compel obedience by
43 proceedings for contempt, in the same manner as in a failure to
44 comply with the requirements of a subpoena issued from the court
45 or a refusal to testify in the court.

46 c. (1) If the commissioner determines, after either an initial
47 determination as a result of an audit of a business or an

1 investigation pursuant to subsection a. of this section, that an
2 employer is in violation of any **【wage and hour law or】** State wage,
3 benefit and tax law, as defined in section 1 of P.L.2009, c.194
4 (C.34:1A-1.11), including but not limited to a violation of
5 R.S.34:15-79, or has failed to meet obligations as provided in
6 R.S.43:21-7 or R.S.43:21-14, or for a violation of any provision of
7 P.L.1940, c.153 (C.34:2-21.1 et seq.) or P.L.1989, c.293 (C.34:15C-
8 1 et al.), the commissioner may issue a stop-work order against the
9 employer requiring cessation of all business operations of the
10 employer at **【the specific place of business or employment in which**
11 **the violation exists】** one or more worksites or across all of the
12 employer's worksites and places of business. The stop-work order
13 may be issued only against the employer found to be in violation or
14 non-compliance. If a stop-work order has been issued against a
15 subcontractor pursuant to this subsection, the general contractor
16 shall retain the right to terminate the subcontractor from the project.
17 The order shall be effective when served upon the employer at the
18 place of business or, for a particular employer worksite, when
19 served at that worksite. The order shall remain in effect until the
20 commissioner issues an order releasing the stop-work order upon
21 finding that the employer has come into compliance and has paid
22 any penalty deemed to be satisfactory to the commissioner, or after
23 the commissioner determines, in a hearing held pursuant to
24 paragraph (2) of this subsection, that the employer did not commit
25 the act on which the order was based. The stop-work order shall be
26 effective against any successor entity engaged in the same or
27 equivalent trade or activity that has one or more of the same
28 principals or officers as the corporation, partnership, limited
29 liability company, or sole proprietorship against which the stop-
30 work order was issued.

31 (2) An employer who is subject to a stop-work order shall have
32 the right to appeal to the commissioner. The contractor may notify
33 the Director of the Division of Wage and Hour Compliance of its
34 request for an opportunity to be heard and contest the stop-work
35 order in writing within 72 hours of its receipt of the notification. A
36 request for hearing shall not automatically stay the effect of the
37 order.

38 Within seven business days of receipt of the notification from the
39 contractor, the director shall hold a hearing to allow the contractor
40 to contest the issuance of a **【stop work】** stop-work order. The
41 director shall permit the contractor to present evidence at the
42 hearing. If the director fails to hold a hearing within seven business
43 days of receipt of the notification from the contractor, an
44 administrative law judge shall have the authority to release the stop-
45 work order.

46 The director shall issue a written decision within five business
47 days of the hearing either upholding or reversing the contractor's

1 stop-work order. The decision shall include the grounds for
2 upholding or reversing the contractor's stop-work order.

3 If the contractor disagrees with the written decision, the
4 contractor may appeal the decision to the commissioner, in
5 accordance with the "Administrative Procedure Act," P.L.1968,
6 c.410 (C.52:14B-1 et seq.).

7 If the employer does not request an appeal to the commissioner
8 in writing, the stop-work order shall become a final order after the
9 expiration of the 72-hour period. The authority to assess a civil
10 penalty under paragraph (1) of this subsection shall be in addition to
11 any misclassification penalty assessed under this subsection and all
12 other enforcement provisions or assessments issued for the
13 employer's violation of any State wage, benefit and tax law,
14 including but not limited to a violation of R.S.34:15-79, or a failure
15 to meet obligations required by R.S.43:21-7 or R.S.43:21-14, or for
16 a violation of any provision of P.L.1940, c.153 (C.34:2-21.1 et seq.)
17 or P.L.1989, c.293 (C.34:15C-1 et al.). The commission may
18 compromise any civil penalty assessed under this section in an
19 amount the commissioner determines to be appropriate.

20 Once the stop-work order becomes final, any employee affected
21 by a stop-work order issued pursuant to this section shall be entitled
22 to pay from the employer for the first ten days of work lost because
23 of the stop-work order. Upon request of any employee not paid
24 wages, the commissioner may take assignment of the claim and
25 bring any legal action necessary to collect all that is due.

26 (3) As an alternative to issuing a stop-work order in accordance
27 with paragraph (1) of this subsection, if the commissioner
28 determines, after an investigation pursuant to subsection a. of this
29 section, that an employer is in violation of R.S.34:15-79, the
30 commissioner may provide and transfer all details and materials
31 related to the investigation under this section to the Director of the
32 Division of Workers' Compensation for any enforcement of
33 penalties or stop-work orders the director determines are
34 appropriate.

35 (cf: P.L.2019, c.158, s.2)

36

37 5. Section 11 of P.L.1963, c.150 (C.34:11-56.35) is amended to
38 read as follows:

39 11. (a) Any employer who willfully hinders or delays the
40 commissioner in the performance of his duties in the enforcement of
41 this act, or fails to make, keep, and preserve any records as required
42 under the provisions of this act, or falsifies any such record, or
43 refuses to make any such record accessible to the commissioner
44 upon demand, or fails to timely respond to or furnish records
45 required by a subpoena issued by the commissioner, or refuses to
46 furnish a sworn statement of such record or any other information
47 required for the proper enforcement of this act to the commissioner

1 upon demand, or pays or agrees to pay wages at a rate less than the
2 rate applicable under this act or otherwise violates any provision of
3 this act or of any regulation or order issued under this act shall be
4 guilty of a disorderly persons offense and shall, upon conviction
5 therefor, be fined not less than \$100.00 nor more than \$1,000 or be
6 imprisoned for not less than 10 nor more than 90 days, or by both
7 such fine and imprisonment. Each week, in any day of which a
8 worker is paid less than the rate applicable to him under this act and
9 each worker so paid, shall constitute a separate offense. In addition
10 to the foregoing fines, and in addition to or as an alternative to any
11 criminal proceedings, if an employer fails to comply with any
12 lawfully issued subpoena, or on the refusal of any witness to testify
13 to any matter regarding which the witness may be lawfully
14 interrogated, the commissioner may apply to the Superior Court to
15 compel obedience by proceedings for contempt, in the same manner
16 as in failure to comply with the requirements of a subpoena issued
17 from the court or a refusal to testify in the court.

18 (b) As an alternative to or in addition to any other sanctions
19 provided by law for violations of any provision of P.L.1963, c.150
20 (C.34:11-56.25 et seq.), when the Commissioner of Labor and
21 Workforce Development finds that an employer has violated that
22 act, the commissioner is authorized to assess and collect
23 administrative penalties, up to a maximum of \$2,500 for a first
24 violation and up to a maximum of \$5,000 for each subsequent
25 violation, specified in a schedule of penalties to be promulgated as a
26 rule or regulation by the commissioner in accordance with the
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
28 seq.). When determining the amount of the penalty imposed because
29 of a violation, the commissioner shall consider factors which
30 include the history of previous violations by the employer, the
31 seriousness of the violation, the good faith of the employer and the
32 size of the employer's business. No administrative penalty shall be
33 levied pursuant to this section unless the Commissioner of Labor
34 and Workforce Development provides the alleged violator with
35 notification of the violation and of the amount of the penalty by
36 certified mail and an opportunity to request a hearing before the
37 commissioner or his designee within 15 days following the receipt
38 of the notice. If a hearing is requested, the commissioner shall issue
39 a final order upon such hearing and a finding that a violation has
40 occurred. If no hearing is requested, the notice shall become a final
41 order upon expiration of the 15-day period. Payment of the penalty
42 is due when a final order is issued or when the notice becomes a
43 final order. Any penalty imposed pursuant to this section may be
44 recovered with costs in a summary proceeding commenced by the
45 commissioner pursuant to the "Penalty Enforcement Law of 1999,"
46 P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine
47 or penalty pursuant to this section shall be applied toward

1 enforcement and administration costs of the Division of Workplace
2 Standards in the Department of Labor and Workforce Development.

3 (c) When the Commissioner of Labor and Workforce
4 Development finds that the employer has violated provisions of
5 P.L.1963, c.150 (C.34:11-56.25 et seq.), the commissioner may
6 refer the matter to the Attorney General or his designee for
7 investigation and prosecution. Nothing in this subsection shall be
8 deemed to limit the authority of the Attorney General to investigate
9 and prosecute violations of the New Jersey Code of Criminal
10 Justice, nor to limit the commissioner's ability to refer any matter
11 for criminal investigation or prosecution.

12 (d) If the commissioner makes an initial determination that an
13 employer has violated the provisions of P.L.1963, c.150 (C.34:11-
14 56.25 et seq.) by paying wages at rates less than the rates applicable
15 under that act, whether or not the commissioner refers the matter to
16 the Attorney General or other appropriate prosecutorial authority
17 for investigation or prosecution pursuant to subsection (c) of this
18 section, the commissioner may immediately issue a stop-work order
19 to cease all business operations at every site where the violation
20 has occurred one or more worksites or across all of the employer's
21 worksites and places of business. The stop-work order may be
22 issued only against the employer found to be in violation or non-
23 compliance. If a stop-work order has been issued against a
24 subcontractor pursuant to this subsection, the general contractor
25 shall retain the right to terminate the subcontractor from the project.
26 The stop-work order shall remain in effect until the commissioner
27 issues an order releasing the stop-work order upon finding that the
28 employer has agreed to pay wages at the required rate and has paid
29 any wages due and any penalty deemed satisfactory to the
30 commissioner. Once the stop-work order is issued, any employee
31 affected by a stop-work order issued pursuant to this section shall
32 be entitled to pay from the employer for the first ten days of work
33 lost because of the stop-work order. Upon request of any employee
34 not paid wages, the commissioner can take assignment of the claim
35 and bring any legal action necessary to collect all that is due. As a
36 condition for release from a stop-work order, the commissioner may
37 require the employer to file with the department periodic reports for
38 a probationary period that shall not exceed two years that
39 demonstrate the employer's continued compliance with the
40 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The
41 commissioner may assess a civil penalty of \$5,000 per day against
42 an employer for each day that it conducts business operations that
43 are in violation of the stop-work order. That penalty shall be
44 collected by the commissioner in a summary proceeding in
45 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
46 c.274 (C.2A:58-10 et seq.).
47 (cf: P.L.2019, c.158, s.1)

1 6. Section 8 of P.L.2019, c.212 (C.34:11-58.1) is amended to
2 read as follows:

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

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

15 (2) issue a **【stop work】** stop-work order against the violators
16 requiring the cessation of all business operations **【of the violator.**
17 **The stop work order may only be issued against the individual or**
18 **entity found to be in violation, and only as to the specific place of**
19 **business or employment for which the violation exists】** at one or
20 more worksites or across all of the employer's worksites and places
21 of business. The **【stop work】** stop-work order shall be effective
22 when served upon the violator or at a place of business or
23 employment by posting a copy of the **【stop work】** stop-work order
24 in a conspicuous location at the place of business or employment.
25 The **【stop work】** stop-work order shall remain in effect until the
26 commissioner issues an order releasing the **【stop work】** stop-work
27 order upon a finding that the violation has been corrected. As a
28 condition of release of a stop-work order under this section, the
29 commissioner may require the employer against whom the stop-
30 work order had been issued to file with the department periodic
31 reports for a probationary period of two years. The commissioner
32 may assess a civil penalty of \$5,000 per day against an employer for
33 each day that it conducts business operations that are in violation of
34 the stop-work order. That penalty shall be collected by the
35 commissioner in a summary proceeding in accordance with the
36 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
37 et seq.).

38 b. **【Stop work】** Stop-work orders and any penalties imposed
39 under a **【stop work】** stop-work order against a corporation,
40 partnership, limited liability corporation, or sole proprietorship shall
41 be effective against any successor entity that has one or more of the
42 same principals or officers as the corporation, partnership, or sole
43 proprietorship against which the **【stop work】** stop-work order was
44 issued and that is engaged in the same or equivalent trade or
45 activity.

1 c. Any employee affected by a **【stop work】** stop-work order
2 issued pursuant to this section shall be paid by the employer for the
3 first ten days of work lost because of the **【stop work】** stop-work
4 order.

5 d. A rebuttable presumption that an employer has established a
6 successor entity shall arise if the two share at least two of the
7 following capacities or characteristics:

- 8 (1) perform similar work within the same geographical area;
- 9 (2) occupy the same premises;
- 10 (3) have the same telephone or fax number;
- 11 (4) have the same email address or Internet website;
- 12 (5) employ substantially the same work force, administrative
13 employees, or both;
- 14 (6) utilize the same tools, facilities, or equipment;
- 15 (7) employ or engage the services of any person or persons
16 involved in the direction or control of the other; or
- 17 (8) list substantially the same work experience.

18 (cf: P.L.2019, c.212, s.8)

19

20 7. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill provides the Commissioner of Labor and Workforce
26 Development, with respect to violations of State wage, benefit and
27 tax laws, additional enforcement options in the Office of
28 Administrative Law and in the courts, including subpoena powers
29 and injunctive relief. The bill permits the stop-work orders
30 currently permitted for violations of those laws to be applied to all
31 worksites of a violator, provides penalties of \$5,000 per day for a
32 failure to comply with a stop-work order, and entitles employees to
33 pay from their employers for the first ten days of a stop-work order.