

SENATE, No. 4223

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 6, 2021

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Provides certain protections and rights for temporary laborers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning employment and protection of temporary
2 laborers, supplementing Title 34 of the Revised Statutes, and
3 amending P.L.1989, c.331.
4

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

8 1. (New section) The Legislature finds and declares:

9 a. At least 127,000 individuals work for temporary help service
10 firms, sometimes referred to as temp agencies or staffing agencies,
11 in New Jersey. Approximately 100 temporary help service firms
12 with several branch offices are licensed throughout the State.
13 Moreover, there are a large, though unknown, number of unlicensed
14 temporary help service firms that operate outside the purview of
15 law enforcement.

16 b. Recent national data indicate that the share of Black and
17 Latino temporary and staffing workers far outstrips their proportion
18 of the workforce in general. In addition to a heavy concentration in
19 service occupations, temporary laborers are heavily concentrated in
20 the production, transportation, and material moving occupations and
21 manufacturing industries. Further, full-time temporary help service
22 firm workers earn 41 percent less than workers in traditional work
23 arrangements, and these workers are far less likely than other
24 workers to receive employer-sponsored retirement and health
25 benefits.

26 c. Recent studies and a survey of low-wage temporary laborers
27 themselves find that, generally, these workers are particularly
28 vulnerable to abuse of their labor rights, including unpaid wages,
29 failure to pay for all hours worked, minimum wage and overtime
30 violations, unsafe working conditions, unlawful deductions from
31 pay for meals, transportation, equipment, and other items, as well as
32 discriminatory practices.

33 d. This act is intended to further protect the labor and
34 employment rights of these workers.
35

36 2. (New section) As used in P.L. , c. (C.) (pending
37 before the Legislature as this bill):

38 “Commissioner” means Commissioner of Labor and Workforce
39 Development, or a designee of the commissioner.

40 “Employ” means to suffer or permit to work for compensation,
41 including by means of ongoing, contractual relationships in which
42 the employer retains substantial direct or indirect control over the
43 employee's employment opportunities or terms and conditions of
44 employment.

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 “Employer” means any person or corporation, partnership,
2 individual proprietorship, joint venture, firm, company, or other
3 similar legal entity who engages the services of an employee and
4 who pays the employee’s wages, salary, or other compensation, or
5 any person acting directly or indirectly in the interest of an
6 employer in relation to an employee.

7 “Hours worked” means all of the time that the employee is
8 required to be at the employee’s place of work or on duty. Nothing
9 in P.L. , c. (C.) (pending before the Legislature as this
10 bill) requires an employer to pay an employee for hours the
11 employee is not required to be at the employee’s place of work
12 because of holidays, vacation, lunch hours, illness, and similar
13 reasons.

14 “Person” means any natural person or their legal representative,
15 partnership, corporation, company, trust, business entity, or
16 association, and any agent, employee, salesman, partner, officer,
17 director, member, stockholder, associate, trustee, or beneficiary of a
18 trust thereof.

19 “Temporary laborer” means a person who contracts for
20 employment with a temporary help service firm.

21 “Temporary labor applicant” means a person who requests a job
22 assignment through a temporary help service firm, whether in the
23 presence of the firm, in writing, or through an online application
24 process.

25 “Temporary labor” means work performed by a temporary
26 laborer at the business of, or for, a third party client of a temporary
27 help service firm, the duration of which may be specific or
28 undefined, pursuant to a contract or understanding between the
29 temporary help service firm and the third party client.

30 “Temporary help service firm” means any person or entity who
31 operates a business which consists of employing individuals
32 directly or indirectly for the purpose of assigning the employed
33 individuals to assist the firm's customers in the handling of the
34 customers' temporary, excess or special work loads, and who, in
35 addition to the payment of wages or salaries to the employed
36 individuals, pays federal social security taxes and State and federal
37 unemployment insurance; carries workers’ compensation insurance
38 as required by State law; and sustains responsibility for the actions
39 of the employed individuals while they render services to the firm's
40 customers. A temporary help service firm is required to comply
41 with the provisions of P.L.1960, c. 39 (C.56:8-1 et seq.).

42 “Third party client” means any person who contracts with a
43 temporary help service firm for obtaining temporary laborers.

44

45 3. (New section) a. Whenever a temporary help service firm
46 agrees to send a person to work as a temporary laborer, the
47 temporary help service firm shall provide the temporary laborer, at
48 the time of dispatch, a statement, in writing in English and in the

1 language identified by the employee as the employee's primary
2 language, containing the following items on a form approved by the
3 commissioner:

- 4 (1) the name of the temporary laborer;
- 5 (2) the name, address, and telephone number of:
 - 6 (a) the temporary help service firm, or the contact information
 - 7 of the firm's agent facilitating the placement;
 - 8 (b) its workers' compensation carrier;
 - 9 (c) the worksite employer or third party client; and
 - 10 (d) the Department of Labor and Workforce Development;
- 11 (3) the name and nature of the work to be performed;
- 12 (4) the wages offered;
- 13 (5) the name and address of the assigned worksite of each
- 14 temporary laborer;
- 15 (6) the terms of transportation offered to the temporary laborer;
- 16 (7) a description of the position and whether it shall require any
- 17 special clothing, protective equipment, and training, and what
- 18 training and clothing will be provided by the temporary help service
- 19 firm or the third party client; and any licenses and any costs charged
- 20 to the employee for supplies or training;
- 21 (8) whether a meal or equipment, or both, are provided, either
- 22 by the temporary help service firm or the third party client, and the
- 23 cost of the meal and equipment, if any;
- 24 (9) for multi-day assignments, the schedule;
- 25 (10) the length of the assignment; and
- 26 (11) the amount of sick leave to which temporary workers are
- 27 entitled under the P.L.2018, c.10 (C.34:11D-1 et seq.), and the
- 28 terms of its use.

29 In the event of a change in the schedule, shift, or location of an
30 assignment for a multi-day assignment of a temporary laborer, the
31 temporary help service firm shall provide written notice of the
32 change not less than 48 hours in advance to the temporary laborer,
33 when possible. The temporary help service firm shall bear the
34 burden of showing that it was not possible to provide the required
35 notice.

36 If a temporary laborer is assigned to the same assignment for
37 more than one day, the temporary help service firm shall be
38 required to provide the employment notice only on the first day of
39 the assignment and on any day that any of the terms listed on the
40 employment notice are changed.

41 If the temporary laborer is not placed with a third party client or
42 otherwise contracted to work for that day, the temporary help
43 service firm shall, upon request, provide the temporary laborer with
44 a confirmation that the temporary laborer sought work, signed by an
45 employee of the temporary help service firm, which shall include
46 the name of the firm, the name and address of the temporary
47 laborer, and the date and the time that the temporary laborer
48 receives the confirmation.

1 b. No temporary help service firm shall send any temporary
2 laborer to any place where a strike, a lockout, or other labor dispute
3 exists without providing, at the time of dispatch, a statement, in
4 writing, informing the temporary laborer of the labor dispute, and
5 the laborer's right to refuse the assignment.

6 c. The commissioner shall require temporary help service firms
7 to employ personnel who can effectively communicate the
8 information required in subsections a. and b. of this section to
9 temporary laborers in Spanish or in any other language that is
10 generally understood in the locale of the temporary help service
11 firm.

12 d. Any temporary help service firm that violates this section
13 shall be subject to a civil penalty of not less than \$500 and not to
14 exceed \$1,000 for each violation found by the commissioner. That
15 penalty shall be collected by the commissioner in a summary
16 proceeding in accordance with the "Penalty Enforcement Law of
17 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

18 e. The commissioner shall develop and implement a
19 multilingual outreach program to inform temporary laborers about
20 their rights pursuant to P.L. , c. (C.) (pending before the
21 Legislature as this bill). The program shall include the distribution
22 of written materials in English, Spanish and any other language that
23 is the primary language of 10 percent or more of the registered
24 voters in the State to community-based organizations and worker
25 centers who work with temporary workers, and regular outreach to
26 these organizations to determine how the commissioner can better
27 inform temporary laborers of their rights.
28

29 4. (New Section) a. Whenever a temporary help service firm
30 sends one or more persons to work as temporary laborers, the
31 temporary help service firm shall keep the following records
32 relating to that transaction:

33 (1) the name, address, and telephone number of the third party
34 client, including each worksite, to which temporary laborers were
35 sent by the temporary help service firm and the date of the
36 transaction;

37 (2) for each temporary laborer: the name and address, the
38 specific location sent to work, the type of work performed, the
39 number of hours worked, the hourly rate of pay, and the date sent.
40 The third party client shall be required to remit all information
41 required under this paragraph to the temporary help service firm no
42 later than seven days following the last day of the work week
43 worked by the temporary laborer;

44 (3) the name and title of the individual or individuals at each
45 third party client's place of business responsible for the transaction;

46 (4) any specific qualifications or attributes of a temporary
47 laborer, requested by each third party client;

1 (5) copies of all contracts, if any, with the third party client and
2 copies of all invoices for the third party client;

3 (6) copies of all employment notices provided in accordance
4 with subsection a. of section 3 of P.L. , c. (C.) (pending
5 before the Legislature as this bill);

6 (7) the amounts of any deductions to be made from each
7 temporary laborer's compensation by either the third party client or
8 by the temporary help service firm for the temporary laborer's food,
9 equipment, withheld income tax, withheld Social Security
10 deductions, and every other deduction;

11 (8) verification of the actual cost of any equipment or meal
12 charged to a temporary laborer;

13 (9) the race, ethnicity, and gender of each temporary laborer or
14 applicant, as provided by that laborer or applicant, who requests
15 employment with, or is contracted by, the temporary help service
16 firm. For each applicant, the temporary help service firm shall
17 provide the applicant with and retain a copy of a written notice
18 specifying the date, time, and location at which the applicant
19 requested employment, signed by an employee of the temporary
20 help service firm; and

21 (10) any additional information required by the commissioner.

22 b. The temporary help service firm shall maintain all records
23 under this section for a period of six years from their creation. The
24 records shall be open to inspection by the commissioner during
25 normal business hours. Records described in paragraphs (1), (2),
26 (3), (6), (7), and (8) of subsection a. of this section shall be
27 available for review or copying by that temporary laborer or an
28 authorized representative of the temporary laborer during normal
29 business hours within five days following a written request.

30 In addition, a temporary help service firm shall make records
31 related to the number of hours billed to a third party client for that
32 individual temporary laborer's hours of work available for review or
33 copying during normal business hours within five days following a
34 written request. The temporary help service firm shall make forms,
35 in duplicate, for those requests available to temporary laborers at
36 the dispatch office. The temporary laborer shall be given a copy of
37 the request form. It shall be a violation of this section to make any
38 false, inaccurate, or incomplete entry into, or to delete required
39 information from, any record required by this section.

40 c. (1) Failure by the third party client to maintain and remit
41 accurate time records to the temporary help service firm as provided
42 in paragraph (2) of subsection a. of this section shall constitute a
43 violation by a third party client under section 11 of
44 P.L. , c. (C.) (pending before the Legislature as this bill),
45 unless the third party client has been precluded from submitting
46 those time records for reasons beyond its control. A third party
47 client that violates paragraph (2) of subsection a. of this section
48 shall be subject to a civil penalty not to exceed \$500 for each

1 violation found by the commissioner. The penalty shall be
2 collected in a summary proceeding in accordance with the "Penalty
3 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

4 (2) A failure by the third party client to provide time records in
5 accordance with subsection b. of this section shall not be a violation
6 and shall not be the basis for a suit or other action under section 11
7 of P.L. , c. (C.) (pending before the Legislature as this
8 bill), against the temporary help service firm.

9 (3) Failure of a third party client to remit any information
10 required by this section to a temporary help service firm shall not be
11 a defense to the temporary help service firm recordkeeping
12 requirements of this section.

13

14 5. (New section) a. A temporary help service firm or a third
15 party client, or a contractor or agent of either, shall charge no fee to
16 a temporary laborer to transport a temporary laborer to or from the
17 designated work site.

18 b. A temporary help service firm shall be responsible for the
19 conduct and performance of any person who transports a temporary
20 laborer from the firm to a work site, unless the transporter is:

21 (1) a public mass transportation system;

22 (2) a common carrier;

23 (3) the temporary laborer providing his or her own
24 transportation; or

25 (4) selected exclusively by and at the sole choice of the
26 temporary laborer for transportation in a vehicle not owned or
27 operated by the temporary help service firm.

28 If any temporary help service firm provides transportation to a
29 temporary laborer or refers a temporary laborer as provided in
30 subsection c. of this section, the temporary help service firm shall
31 not allow a motor vehicle to be used for the transporting of
32 temporary laborers if the temporary help service firm knows or
33 should know that the motor vehicle used for the transportation of
34 temporary laborers is unsafe or not equipped as required by
35 P.L. , c. (C.) (pending before the Legislature as this bill),
36 unless the vehicle is:

37 (1) the property of a public mass transportation system;

38 (2) the property of a common carrier;

39 (3) the temporary laborer's personal vehicle; or

40 (4) a vehicle of a temporary laborer used to carpool other
41 temporary laborers and which is selected exclusively by and at the
42 sole choice of the temporary laborer for transportation.

43 c. A temporary help service firm shall not refer a temporary
44 laborer to any person for transportation to a work site unless that
45 person is:

46 (1) a public mass transportation system; or

47 (2) providing the transportation at no fee to the temporary
48 laborer.

1 Directing the temporary laborer to accept a specific car pool as a
2 condition of work shall be considered a referral by the temporary
3 help service firm. Any mention or discussion of the cost of a car
4 pool shall be considered a referral by the temporary help service
5 firm. Informing a temporary laborer of the availability of a car pool
6 driven by another temporary laborer shall not be considered a
7 referral by the temporary help service firm.

8 The temporary help service firm shall obtain, and keep on file,
9 documentation that any provider of transportation to the temporary
10 laborer that the temporary help service firm makes referrals to or
11 contracts with is in compliance with the requirements of subsections
12 d., e., and f. of this section.

13 d. Any motor vehicle that is owned or operated by the temporary
14 help service firm or a third party client, or a contractor or agent of
15 either, or to which a temporary help service firm refers a temporary
16 laborer, which is used for the transportation of temporary laborers
17 shall comply with minimum insurance requirements set by the State
18 of New Jersey. The driver of the vehicle shall hold a valid license
19 to operate motor vehicles in the correct classification and shall be
20 required to produce the license immediately upon demand by the
21 commissioner or any other person authorized to enforce
22 P.L. , c. (C.) (pending before the Legislature as this bill).
23 The commissioner shall forward a violation of this subsection to the
24 appropriate law enforcement authority or regulatory agency.

25 e. A motor vehicle that is owned or operated by the temporary
26 help service firm or a third party client, or a contractor or agent of
27 either, or to which a temporary help service firm refers a temporary
28 laborer, which is used for the transportation of temporary laborers
29 shall have a seat and a safety belt for each passenger. The
30 commissioner shall forward a violation of this subsection to the
31 appropriate law enforcement authority or regulatory agency.

32 f. Unless the temporary laborer requests otherwise, when a
33 temporary laborer has been transported to a work site, the
34 temporary help service firm or a third party client, or a contractor or
35 agent of either, shall provide transportation back to the point of hire
36 at the end of each work day.

37
38 6. (New section) a. At the time of payment of wages, a
39 temporary help service firm shall provide each temporary laborer
40 with a detailed itemized statement, on the temporary laborer's
41 paycheck stub or on a form approved by the commissioner, listing
42 the following:

43 (1) the name, address, and telephone number of each third party
44 client at which the temporary laborer worked. If this information is
45 provided on the temporary laborer's paycheck stub, a code for each
46 third party client may be used so long as the required information
47 for each coded third party client is made available to the temporary
48 laborer;

1 (2) the number of hours worked by the temporary laborer at
2 each third party client each day during the pay period. If the
3 temporary laborer is assigned to work at the same work site of the
4 same third party client for multiple days in the same work week, the
5 temporary help service firm may record a summary of hours worked
6 at that third party client's worksite so long as the first and last day
7 of that work week are identified as well;

8 (3) the rate of payment for each hour worked, including any
9 premium rate or bonus. Overtime pay shall be paid in accordance
10 with the provisions of subsection b. of section 5 of P.L.1966, c.113
11 (C.34:11-56a4);

12 (4) the total pay period earnings;

13 (5) the amount of each deduction made from the temporary
14 laborer's compensation made either by the third party client or by
15 the temporary help service firm, and the purpose for which each
16 deduction was made, including for the temporary laborer's food,
17 equipment, withheld income tax, withheld Social Security
18 deductions, and every other deduction; the current maximum
19 amount of a placement fee which the temporary help service firm
20 may charge to a third party client to directly hire the temporary
21 laborer pursuant to subsection a. of section 7 of
22 P.L. , c. (C.) (pending before the Legislature as this bill);
23 and

24 (6) any additional information required by the commissioner.

25 For each temporary laborer who is contracted to work a single
26 day, the third party client shall, at the end of the work day, provide
27 such temporary laborer with a work verification form, approved by
28 the commissioner, which shall contain the date, the temporary
29 laborer's name, the work location, and the hours worked on that
30 day. Any third party client who violates this section shall be subject
31 to a civil penalty not to exceed \$500 for each violation found by the
32 commissioner. The maximum civil penalty shall increase to \$2,500
33 for a second or subsequent violation. Each violation of paragraph 1
34 of this subsection for each temporary laborer and for each day the
35 violation continues shall constitute a separate and distinct violation.
36 That penalty shall be collected by the commissioner in a summary
37 proceeding in accordance with the "Penalty Enforcement Law of
38 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

39 b. A temporary help service firm shall provide each temporary
40 laborer an annual earnings summary within a reasonable time after
41 the preceding calendar year, but in no case later than February 1 of
42 each year. A temporary help service firm shall, at the time of each
43 wage payment, give notice to temporary laborers of the availability
44 of the annual earnings summary or post such a notice in a
45 conspicuous place in the public reception area.

46 c. At the request of a temporary laborer, a temporary help
47 service firm shall hold the daily wages of the temporary laborer and
48 make either weekly, bi-weekly, or semi-monthly payments. The

1 wages shall be paid in a single check, or, at the temporary laborer's
2 sole option, by direct deposit or other manner approved by the
3 commissioner, representing the wages earned during the period,
4 either weekly, bi-weekly, or semi-monthly, designated by the
5 temporary laborer in accordance with P.L.1965, c.173 (C.34:11-
6 4.1 et seq.).

7 Vouchers or any other method of payment which are not
8 negotiable shall be prohibited as a method of payment of wages.
9 Temporary help service firms that make daily wage payments shall
10 provide written notification to all temporary laborers of the right to
11 request weekly, bi-weekly, or semi-monthly checks. The temporary
12 help service firm may provide this notice by conspicuously posting
13 the notice at the location where the wages are received by the
14 temporary laborers.

15 d. No temporary help service firm shall charge any temporary
16 laborer for cashing a check issued by the temporary help service
17 firm for wages earned by a temporary laborer who performed work
18 through that temporary help service firm. No temporary help service
19 firm or third party client shall charge any temporary laborer for the
20 expense of conducting any consumer report, as that term is defined
21 in the "Fair Credit Reporting Act," (15 U.S.C. s.1681 et seq.), any
22 criminal background check of any kind, or any drug test of any
23 kind.

24 e. Temporary laborers shall be paid no less than the wage rate
25 stated in the notice as provided in section 3 of P.L. , c. (C.)
26 (pending before the Legislature as this bill), for all the work
27 performed on behalf of the third party client in addition to the work
28 listed in the written description.

29 f. The total amount deducted for meals and equipment shall
30 not cause a temporary laborer's hourly wage to fall below the State
31 or federal minimum wage, whichever is greater. However, a
32 temporary help service firm may deduct the actual market value of
33 reusable equipment provided to the temporary laborer by the
34 temporary help service firm which the temporary laborer fails to
35 return, if the temporary laborer provides a written authorization for
36 that deduction at the time the deduction is made.

37 g. A temporary laborer who is contracted by a temporary help
38 service firm to work at a third party client's worksite but is not
39 utilized by the third party client shall be paid by the temporary help
40 service firm for a minimum of four hours of pay at the agreed upon
41 rate of pay. However, in the event the temporary help service firm
42 contracts the temporary laborer to work at another location during
43 the same shift, the temporary laborer shall be paid by the temporary
44 help service firm for a minimum of two hours of pay at the agreed
45 upon rate of pay.

46 h. A third party client is required to reimburse a temporary help
47 service firm wages and related payroll taxes for services performed
48 by the temporary laborer for the third party client according to

1 payment terms outlined on invoices, service agreements, or stated
2 terms provided by the temporary help service firm. A third party
3 client who fails to comply with this subsection is subject to the
4 penalties provided in section 11 of P.L. , c. (C.) (pending
5 before the Legislature as this bill).

6 The commissioner shall review a complaint filed by a licensed
7 temporary help service firm against a third party client. The
8 commissioner shall review the payroll and accounting records of the
9 temporary help service firm and the third party client for the period
10 in which the violation of P.L. , c. (C.) (pending before the
11 Legislature as this bill) is alleged to have occurred to determine if
12 wages and payroll taxes have been paid to the temporary help
13 service firm and that the temporary laborer has been paid the wages
14 owed.

15 i. Any temporary help service firm that violates this section
16 shall be subject to a civil penalty not to exceed \$500 for each
17 violation found by the commissioner. That penalty shall be
18 collected by the commissioner in a summary proceeding in
19 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
20 c.274 (C.2A:58-10 et seq.).

21
22 7. (New section) a. (1) No temporary help service firm shall
23 restrict the right of a temporary laborer to accept a permanent
24 position with a third party client to whom the temporary laborer has
25 been referred for work, restrict the right of a third party client to
26 offer employment to a temporary laborer, or restrict the right of a
27 temporary laborer to accept a permanent position for any other
28 employment. A temporary help service firm may charge a
29 placement fee to a third party client for employing a temporary
30 laborer for whom a contract for work was effected by the temporary
31 help service firm not to exceed the equivalent of the total daily
32 commission rate the temporary help service firm would have
33 received over a 60-day period, reduced by the equivalent of the
34 daily commission rate the temporary help service firm would have
35 received for each day the temporary laborer has performed work for
36 the temporary help service firm in the preceding 12 months.

37 (2) Any temporary help service firm which charges a placement
38 fee to a third party client for employing a temporary laborer shall
39 include on the wage payment and notice form of each affected
40 temporary laborer the maximum amount of a fee that shall be
41 charged to a third party client by the temporary help service firm,
42 and the total amount of actual charges to the third party client for
43 the temporary laborer during each pay period compared to the total
44 compensation cost for the temporary laborer, including costs of any
45 benefits provided. Failure to provide the required information shall
46 constitute a separate violation for each day the temporary help
47 service firm fails to provide the required information. No fee
48 provided for under this section shall be assessed or collected by the

1 temporary help service firm when the temporary laborer is offered
2 permanent work following the suspension or revocation of the
3 temporary help service firm's registration by the commissioner.

4 b. Each year, at the time of registration with the commissioner
5 as required by section 8 of P.L. , c. (C.) (pending before
6 the Legislature as this bill), each temporary help service firm shall
7 submit to the commissioner, on a form created by the
8 commissioner, the number of temporary laborers the temporary help
9 service firm has placed in a permanent position with a third party
10 client in the preceding 12 months as well as the percentage those
11 permanent placements represent of the total number of temporary
12 laborers contracted by the temporary help service firm during the
13 same period. Each day that the temporary help service firm fails to
14 fully comply with the requirements of this subsection shall
15 constitute a separate notice violation.

16 c. Any temporary laborer assigned to work at a third party
17 client shall not be paid less than the same average rate of pay and
18 equivalent benefits as a permanent employee of the third party
19 client performing the same or substantially similar work on jobs the
20 performance of which requires equal skill, effort, and responsibility,
21 and which are performed under similar working conditions. Each
22 violation of this subsection for each affected temporary laborer
23 shall constitute a separate violation under section 11 of
24 P.L. , c. (C.) (pending before the Legislature as this bill).

25 d. Any temporary help service firm that violates this section
26 shall be subject to a civil penalty not to exceed \$500 for each
27 violation found by the commissioner. That penalty shall be
28 collected by the director in a summary proceeding in accordance
29 with the "Penalty Enforcement Law of 1999," P.L.1999, c.274
30 (C.2A:58-10 et seq.).

31

32 8. (New section) a. A temporary help service firm which is
33 located, operates, or transacts business within this State shall
34 register with the commissioner in accordance with rules adopted by
35 the commissioner for temporary help service firms and shall be
36 subject to P.L. , c. (C.) (pending before the Legislature as
37 this bill). Each temporary help service firm shall provide proof of
38 an employer account number issued by the commissioner for the
39 payment of unemployment insurance contributions as required
40 under the "unemployment compensation law," R.S.43:21-1 et seq.,
41 and proof of valid workers' compensation insurance in effect at the
42 time of registration covering all of its employees. If, at any time, a
43 temporary help service firm's workers' compensation insurance
44 coverage lapses, the temporary help service firm shall have an
45 affirmative duty to report the lapse of coverage to the commissioner
46 and the temporary help service firm's registration shall be
47 suspended until the firm's workers' compensation insurance is
48 reinstated.

1 The commissioner shall assess each temporary help service firm
2 a non-refundable registration fee not exceeding \$2,000 per year per
3 temporary help service firm and a non-refundable fee not to exceed
4 \$750 for each branch office or other location where the temporary
5 help service firm regularly contracts with temporary laborers for
6 services. The fee shall be paid by check or money order, and the
7 commissioner may not refuse to accept a check on the basis that it
8 is not a certified check or a cashier's check. The commissioner may
9 charge an additional fee to be paid by a temporary help service firm
10 if the firm, or any person on the firm's behalf, issues or delivers a
11 check to the commissioner that is not honored by the financial
12 institution upon which it is drawn. The commissioner shall adopt
13 rules for violation hearings and penalties for violations of P.L. , c.
14 (C.) (pending before the Legislature as this bill).

15 At the time of registration with the commissioner each year, a
16 temporary help service firm shall provide the commissioner with a
17 report containing the information identified in paragraph (9) of
18 subsection a. of section 4 of P.L. , c. (C.) (pending before
19 the Legislature as this bill), broken down by branch office, in the
20 aggregate for all temporary laborers assigned within New Jersey in
21 the prior year to be submitted on a form created by the
22 commissioner.

23 b. It is a violation of P.L. , c. (C.) (pending before the
24 Legislature as this bill) to operate a temporary help service firm
25 without being registered with the commissioner in accordance with
26 subsection a. of this section. The Commissioner shall share a list of
27 all registered temporary help service firms with the Division of
28 Consumer Affairs in the Department of Law and Public Safety, and
29 the division shall create and maintain on its Internet website,
30 accessible to the public:

31 (1) a list of all registered temporary help service firms in the
32 State whose registration is in good standing;

33 (2) a list of temporary help service firms in the State whose
34 registration has been suspended, including the reason for the
35 suspension, the date that the suspension was initiated, and the date,
36 if known, that the suspension is to be lifted; and

37 (3) a list of temporary help service firms in the State whose
38 registration has been revoked, including the reason for the
39 revocation and the date that the registration was revoked.

40 The commissioner shall assess a penalty against any temporary
41 help service firm that fails to register with the commissioner in
42 accordance with P.L. , c. (C.) (pending before the
43 Legislature as this bill) or any rules adopted under
44 P.L. , c. (C.) (pending before the Legislature as this bill) of
45 \$500 for each violation. Each day during which a person operates as
46 a temporary help service firm without being registered as a
47 temporary help service firm with the commissioner shall be a
48 separate and distinct violation of P.L. , c. (C.) (pending

1 before the Legislature as this bill). That penalty shall be collected
2 by the commissioner in a summary proceeding in accordance with
3 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-
4 10 et seq.).

5 A temporary help service firm shall obtain a surety bond issued
6 by a surety company admitted to do business in this State. The
7 principal sum of the bond shall not be less than \$200,000. A copy of
8 the bond shall be filed with the commissioner.

9 The bond required by this section shall be in favor of, and
10 payable to, the people of the State of New Jersey, and shall be for
11 the benefit of any temporary laborer damaged by the temporary help
12 service firm's failure to pay wages, interest on wages, or fringe
13 benefits, or damaged by violation of this section.

14 Thirty days prior to the cancellation or termination of any surety
15 bond required by this section, the surety shall send written notice to
16 both the temporary help service firm and the commissioner
17 identifying the bond and the date of the cancellation or termination.

18 A temporary help service firm shall not conduct any business
19 until it obtains a new surety bond and files a copy of it with the
20 commissioner.

21 This subsection shall not apply to a temporary help service firm
22 whose temporary laborers are covered by a valid collective
23 bargaining agreement, if the agreement expressly provides for:

- 24 (1) Wages;
- 25 (2) Hours of work;
- 26 (3) Working conditions;
- 27 (4) An expeditious process to resolve disputes concerning
28 nonpayment of wages;
- 29 (5) Documentation of its current workers' compensation
30 insurance policy in effect for the temporary laborers; and
- 31 (6) Compliance with all provisions of this section.

32 c. The principal executive officer of a temporary help service
33 firm shall certify under oath at the time of registration of the
34 temporary help service firm each year on a form created by the
35 commissioner that:

36 (1) the signing officer has reviewed the registration form of the
37 temporary help service firm and confirmed the information is true
38 and accurate to the best of the officer's knowledge;

39 (2) the signing officer has reviewed the recordkeeping practices
40 of the temporary help service firm and confirmed that the
41 recordkeeping practices comply with the requirements of section 4
42 of P.L. , c. (C.) (pending before the Legislature as this bill)
43 to the best of his or her knowledge;

44 (3) the signing officer has reviewed the temporary help service
45 firm's filing as required by subsection b. of section 7 of
46 P.L. , c. (C.) (pending before the Legislature as this bill),
47 related to the placement of temporary laborers in permanent
48 positions with third party clients and has confirmed that those

1 practices comply with the requirements of section 7 of
2 P.L. , c. (C.) (pending before the Legislature as this bill) to
3 the best of the officer's knowledge;

4 (4) the signing officer has reviewed the temporary help service
5 firm's practices related to the transportation of temporary laborers
6 and has confirmed that those practices comply with the
7 requirements of section 5 of P.L. , c. (C.) (pending before
8 the Legislature as this bill) to the best of the officer's knowledge;

9 (5) the signing officer has reviewed and is responsible for the
10 surety bond posted by the temporary help service firm and its
11 renewals; and

12 (6) the signing officer:

13 (a) is responsible for establishing and maintaining internal
14 controls to comply with the recordkeeping requirements; and

15 (b) has evaluated the effectiveness of the internal controls.

16 d. An applicant is not eligible to register to operate a temporary
17 help service firm under P.L. , c. (C.) (pending before the
18 Legislature as this bill) if the applicant or any of its officers,
19 directors, partners, or managers or any owner having 25 percent or
20 greater beneficial interest:

21 (1) has been involved, as owner, officer, director, partner, or
22 manager, of a temporary help service firm the registration of which
23 has been revoked or suspended without being reinstated within the
24 five years immediately preceding the filing of the application; or

25 (2) is under the age of 18.

26 e. Every temporary help service firm shall post and keep
27 posted at each location, in a position easily accessible to all
28 employees, notices as supplied and required by the commissioner
29 containing a copy or summary of the provisions of P.L. , c.
30 (C.) (pending before the Legislature as this bill), and a notice
31 which informs the public of a toll-free telephone number operated
32 by the commissioner for temporary laborers and the public to file
33 wage dispute complaints and other alleged violations by temporary
34 help service firms. The notices shall be in English or any other
35 language generally understood in the locale of the temporary help
36 service firm.

37 f. No temporary help service firm shall be permitted to register
38 to operate in New Jersey until it has complied with the requirements
39 of this section.

40

41 9. (New section) a. It is a violation of P.L. , c. (C.)
42 (pending before the Legislature as this bill) for a third party client
43 to enter into a contract for the employment of a temporary laborer
44 with a temporary help service firm not registered under section 8 of
45 P.L. , c. (C.) (pending before the Legislature as this bill). A
46 third party client shall verify a temporary help service firm's status
47 with the commissioner before entering into a contract with the

1 temporary help service firm, and on March 1 and September 1 of
2 each year.

3 A temporary help service firm shall provide each of its third
4 party clients with proof of valid registration issued by the
5 commissioner at the time of entering into a contract. A temporary
6 help service firm shall be required to notify, both by telephone and
7 in writing, each temporary laborer it employs and each third party
8 client with whom it has a contract within 24 hours of any denial,
9 suspension, or revocation of its registration by the commissioner.
10 All contracts between any temporary help service firm and any third
11 party client shall be considered null and void from the date any
12 denial, suspension, or revocation of registration becomes effective
13 and until such time as the temporary help service firm becomes
14 registered and considered in good standing by the commissioner as
15 provided in section 8 of P.L. , c. (C.) (pending before the
16 Legislature as this bill).

17 Upon request, the commissioner shall provide to a third party
18 client a list of entities registered as temporary help service firms.
19 The commissioner shall share a list of all registered temporary help
20 service firms with the Division of Consumer Affairs, and the
21 division shall provide on its Internet website a list of entities
22 registered as temporary help service firms. A third party client may
23 rely on information provided by the commissioner or maintained on
24 the division's website pursuant to section 8 of P.L. , c. (C.)
25 (pending before the Legislature as this bill), and shall be held
26 harmless if such information maintained or provided by the
27 commissioner or the division was inaccurate. Any third party client
28 that violates this section shall be subject to a civil penalty not to
29 exceed \$500. Each day during which a third party client contracts
30 with a person operating as a temporary help service firm but not
31 registered as a temporary help service firm under section 8 of
32 P.L. , c. (C.) (pending before the Legislature as this bill),
33 shall constitute a separate and distinct offense.

34 b. If a third party client leases or contracts with a temporary
35 help service firm for the services of a temporary laborer, the third
36 party client shall be, with the temporary help service firm, jointly
37 and severally responsible for:

38 (1) the payment of wages under the "New Jersey State Wage
39 and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), P.L.1965,
40 c.173 (C.34:11-4.1 et seq.), R.S.34:11-57, and P.L.1952, c.9
41 (C.34:11-56.1 et seq.); and

42 (2) any violation of P.L. , c. (C.) (pending before the
43 Legislature as this bill).

44

45 10. (New section) a. It is a violation of P.L...., c. C.)
46 (pending before the Legislature as this bill) for a temporary help
47 service firm or third party client, or any agent of a temporary help
48 service firm or third party client, to retaliate through discharge or in

1 any other manner against any temporary laborer for exercising any
2 rights granted under P.L...., c. (C.) (pending before the
3 Legislature as this bill). The termination or disciplinary action by a
4 temporary help service firm against a temporary laborer within 90
5 days of the person's exercise of rights protected under
6 P.L. , c. (C.) (pending before the Legislature as this bill)
7 shall raise a rebuttable presumption of having done so in retaliation
8 for the exercise of those rights. Such retaliation shall subject a
9 temporary help service firm or third party client, or both, to civil
10 penalties pursuant to P.L. , c. (C.) (pending before the
11 Legislature as this bill) or a private cause of action.

12 b. It is a violation of P.L. , c. (C.) (pending before the
13 Legislature as this bill) for a temporary help service firm or third
14 party client to retaliate against a temporary laborer for:

15 (1) making a complaint to a temporary help service firm, to a
16 third party client, to a co-worker, to a community organization,
17 before a public hearing, or to a State or federal agency that rights
18 guaranteed under P.L. , c. (C.) (pending before the
19 Legislature as this bill) have been violated;

20 (2) instituting any proceeding under or related to
21 P.L. , c. (C.) (pending before the Legislature as this bill); or

22 (3) testifying or preparing to testify in an investigation or
23 proceeding under P.L. , c. (C.) (pending before the
24 Legislature as this bill).

25 c. When the commissioner finds that a temporary help service
26 firm or third party client has violated this section, the commissioner
27 is authorized to assess and collect administrative penalties, up to a
28 maximum of \$250 for a first violation and up to a maximum of
29 \$500 for each subsequent violation, specified in a schedule of
30 penalties to be promulgated as a rule or regulation by the
31 commissioner in accordance with the "Administrative Procedure
32 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the
33 amount of the penalty imposed because of a violation, the
34 commissioner shall consider factors which include the history of
35 previous violations by the employer, the seriousness of the
36 violation, the good faith of the employer and the size of the
37 employer's business. No administrative penalty shall be levied
38 pursuant to this section unless the commissioner provides the
39 alleged violator with notification of the violation and of the amount
40 of the penalty by certified mail and an opportunity to request a
41 hearing before the commissioner or his designee within 15 days
42 following the receipt of the notice. If a hearing is requested, the
43 commissioner shall issue a final order upon such hearing and a
44 finding that a violation has occurred. If no hearing is requested, the
45 notice shall become a final order upon expiration of the 15-day
46 period. Payment of the penalty is due when a final order is issued
47 or when the notice becomes a final order. Any penalty imposed
48 pursuant to this section may be recovered with costs in a summary

1 proceeding commenced by the commissioner pursuant to "the
2 penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Any sum
3 collected as a fine or penalty pursuant to this section shall be
4 applied toward enforcement and administration costs of the
5 Department of Labor and Workforce Development.

6
7 11. (New section) a. A person aggrieved by a violation of
8 P.L. , c. (C.) (pending before the Legislature as this bill) by
9 a temporary help service firm or a third party client may institute a
10 civil action in the Superior Court, in the county where the alleged
11 offense occurred or where any temporary laborer who is party to the
12 action resides, without regard to exhaustion of any alternative
13 administrative remedies provided in P.L. , c. (C.) (pending
14 before the Legislature as this bill).

15 A temporary help service firm aggrieved by a violation of
16 P.L. , c. (C.) (pending before the Legislature as this bill) by
17 a third party client may institute a civil action in the Superior Court,
18 in the county where the alleged offense occurred or where the
19 temporary help service firm which is party to the action is located.

20 An action may be brought by one or more temporary laborers
21 employed by the temporary help service firm for and on behalf of
22 themselves and other temporary laborers similarly situated against
23 the temporary help service firm or a third party client.

24 Notwithstanding any other relief provided under any other
25 provision of law, a temporary laborer whose rights have been
26 violated under P.L. , c. (C.) (pending before the
27 Legislature as this bill) by a temporary help service firm or a third
28 party client or a temporary help service firm whose rights have been
29 violated under P.L. , c. (C.) (pending before the
30 Legislature as this bill) by a third party client is entitled to the
31 following relief:

32 (1) in the case of any violation of subsection a. of section 7 of
33 P.L. , c. (C.) (pending before the Legislature as this bill)
34 relating to any unlawful restrictions by a temporary help service
35 firm on the right of a temporary laborer to accept a permanent
36 position for any other employment or the right of a third party client
37 to offer such employment to a temporary laborer, \$50 for each
38 temporary laborer affected by the temporary help service firm 's
39 policy, practice, or agreement and for each day that policy, practice,
40 or agreement is in effect, plus actual damages;

41 (2) in the case of unlawful retaliation, the greater of all legal or
42 equitable relief as may be appropriate or liquidated damages equal
43 to \$20,000 per incident of retaliation, at the selection of the
44 aggrieved temporary laborer, and reinstatement, if appropriate; and

45 (3) attorney's fees and costs.

46 b. The right of an aggrieved person to bring an action under
47 this section terminates upon the passing of six years from the final
48 date of employment by the temporary help service firm or the third

1 party client or upon the passing of six years from the date of
2 termination of the contract between the temporary help service firm
3 and the third party client.

4
5 12. (New section) a. The commissioner shall have the authority
6 to deny, revoke, or refuse to renew any registration issued under
7 section 8 of P.L. , c. (C.) (pending before the Legislature
8 as this bill).

9 b. The commissioner shall notify a temporary help service firm
10 in writing by mail of the denial, revocation of, or refusal to renew
11 the registration and the reason for the denial, revocation, or refusal.
12 The commissioner shall also notify the Division of Consumer
13 Affairs of any denial, revocation or refusal to renew the registration
14 of a temporary help service firm, and the division shall update its
15 list of registered temporary help service firms on the Division of
16 Consumer Affairs' website to reflect these changes. The
17 commissioner may deny, revoke, or refuse to renew any registration
18 issued under section 8 of P.L. , c. (C.) (pending before the
19 Legislature as this bill) on the following grounds:

20 (1) The temporary help service firm is in default of payment of
21 the registration fee required under section 8 of
22 P.L. , c. (C.) (pending before the Legislature as this bill),
23 fails to obtain or terminates the surety bond required under section
24 8 of P.L. , c. (C.) (pending before the Legislature as this
25 bill), or otherwise fails to comply with the requirements under
26 section 8 of P.L. , c. (C.) (pending before the Legislature
27 as this bill);

28 (2) The registration required under section 8 of
29 P.L. , c. (C.) (pending before the Legislature as this bill)
30 was procured by fraud or false representation of fact;

31 (3) The temporary help service firm is subject to a court order
32 entering final judgment for violations of P.L. , c. (C.)
33 (pending before the Legislature as this bill) or for violations of
34 P.L.1966, c.113 (C.34:11-56a et seq.) and the judgment was not
35 satisfied within 30 days of either:

36 (a) the expiration of the time for filing an appeal from the final
37 judgment order; or

38 (b) if a timely appeal was made, the date of the final resolution
39 of that appeal and any subsequent appeals resulting in final judicial
40 affirmation of the findings of a violation;

41 (4) The temporary help service firm has failed to comply with
42 the terms of an administrative penalty or final order, within 30 days
43 of issuance of that penalty or order, issued by the commissioner
44 pursuant to P.L. , c. (C.) (pending before the Legislature as
45 this bill) or P.L.1966, c.113 (C.34:11-56a et seq.) for which all
46 appeal rights have been exhausted; or

1 (5) The temporary help service firm has been determined
2 through a separate enforcement process to be operating in violation
3 of any law.

4
5 13. Section 1 of P.L.1989, c.331 (C.34:8-43) is amended to read
6 as follows:

7 1. As used in **[this act]** P.L.1989, c.331 (C.34:8-43 et al.):

8 "Accepting employment" means that a job seeker has entered
9 into an agreement with an employer which includes:

10 (1) The terms and conditions of employment;

11 (2) The salary or wages and any benefits to be paid to the job
12 seeker as compensation for employment; and

13 (3) The date, time and place employment will commence.

14 "A career consulting or outplacement organization" means any
15 person, required to be registered under section 24 of **[this act]**
16 P.L.1989, c.331 (C.34:8-65), providing or rendering services, with
17 or without related products, in connection with advice, instruction,
18 analysis, recommendation or assistance concerning past, present, or
19 future employment or compensation for an individual's time, labor
20 or effort.

21 "Agent" means any individual who performs any function or
22 activity for or on behalf of any person, the purpose of which is to
23 provide services or products to individuals seeking employment,
24 career guidance or counseling, or employment related services or
25 products.

26 "Applicant" means any person applying for licensing or
27 registration under **[this act]** P.L.1989, c.331 (C.34:8-43 et al.).

28 "Attorney General" means the Attorney General of this State or
29 a designee.

30 "Baby sitter" means and includes any individual under 16 years
31 of age, other than a registered nurse or a licensed nurse, entrusted
32 temporarily with the care of children during the absence of their
33 parents, guardians, or individuals standing in loco parentis to them.
34 This definition shall not include persons regularly employed by
35 agencies, or institutions operated by or under the control or
36 supervision of this State, or any of its political subdivisions, nor any
37 child care facilities operated for the care of children when the
38 facilities are similarly controlled or supervised.

39 "Booking agency" means any person who procures, offers,
40 promises, or attempts to procure employment for performing artists,
41 or athletes, not under the jurisdiction of the Athletic Control Board,
42 and who collects a fee for providing those services.

43 "Bureau" means the Bureau of Employment and Personnel
44 Services in the Division of Consumer Affairs within the Department
45 of Law and Public Safety created pursuant to section 2 of **[this act]**
46 P.L.1989, c.331 (C.52:17B-139.4).

47 "Career counseling service" means any business that, through its
48 agents or otherwise, procures or represents itself as procuring

1 employment or employment assistance or advertises in any manner
2 the following services for a fee: career counseling; vocational
3 guidance; aptitude, achievement or vocational testing; executive
4 consulting; personnel consulting; career management, evaluation, or
5 planning; the development of resumes and other promotional
6 materials relating to the preparation for employment; or referral
7 services relating to employment or employment qualifications. A
8 career counseling service shall be licensed as an employment
9 agency pursuant to the provisions of **【this act】** P.L.1989, c.331
10 (C.34:8-43 et al.). A career counseling service shall not include
11 career consulting or outplacement organizations required to be
12 registered under section 24 of **【this act】** P.L.1989, c.331 (C.34:8-
13 65).

14 "Chief" means the Chief of the Bureau of Employment and
15 Personnel Services.

16 "Consulting firm" means any person required to be registered
17 under section 23 of **【this act】** P.L.1989, c.331 (C.34:8-64) that:

18 (1) Identifies, appraises, refers or recommends individuals to be
19 considered for employment by the employer; and

20 (2) Is compensated for services solely by payments from the
21 employer and is not, in any instance, compensated, directly or
22 indirectly, by an individual who is identified, appraised, referred or
23 recommended.

24 "Director" means the Director of the Division of Consumer
25 Affairs in the Department of Law and Public Safety, or his
26 designee.

27 "Employer" means a person seeking to obtain individuals to
28 perform services, tasks, or labor for which a salary, wage, or other
29 compensation or benefits are to be paid.

30 "Employment agency" means any person who, for a fee, charge
31 or commission:

32 (1) Procures or obtains, or offers, promises or attempts to
33 procure, obtain, or assist in procuring or obtaining employment for
34 a job seeker or employees for an employer; or

35 (2) Supplies job seekers to employers seeking employees on a
36 part-time or temporary assignment basis who has not filed
37 notification with the Attorney General pursuant to the provisions of
38 section **【1】** 14 of P.L.1981, c.1 (C.56:8-1.1); or

39 (3) Procures, obtains, offers, promises or attempts to procure or
40 obtain employment or engagements for actors, actresses,
41 performing artists, vocalists, musicians or models; or

42 (4) Acts as a placement firm, career counseling service, or
43 resume service; or

44 (5) Acts as a nurses' registry.

45 "Employment agency" does not mean "temporary help service
46 firm" as that term is defined and used in sections 1 through 12 of
47 P.L. , c. (C.) (pending before the Legislature as this bill).

1 The director shall have the authority to determine, from time to
2 time, that a particular employment agency or career-related service
3 or product, not otherwise expressly subject to the provisions of
4 **【this act】** P.L.1989, c.331 (C.34:8-43 et al.), is subject to whichever
5 requirements of **【this act he】** P.L.1989, c.331 (C.34:8-43 et al.) the
6 director deems appropriate.

7 "Fee, charge or commission" means any payment of money, or
8 promise to pay money to a person in consideration for performance
9 of any service for which licensure or registration is required by
10 **【this act】** P.L.1989, c.331 (C.34:8-43 et al.), or the excess of money
11 received by a person furnishing employment or job seekers over
12 what he has paid for transportation, transfer of baggage or lodging
13 for a job seeker. "Fee, charge or commission" shall also include the
14 difference between the amount of money received by any person
15 who either furnishes job seekers or performers for any
16 entertainment, exhibition or performance, or who furnishes baby
17 sitters for any occasion, and the amount paid by the person to the
18 job seekers, performers or baby sitters.

19 "Job listing service" means any person required to be registered
20 under section 25 of **【this act】** P.L.1989, c.331 (C.34:8-66) who, by
21 advertisement or other means, offers to provide job seekers with a
22 list of employers, a list of job openings or a similar publication, or
23 prepares resumes or lists of applicants for distribution to potential
24 employers, where a fee or other valuable consideration is exacted or
25 attempted to be collected, either directly or indirectly.

26 "Job seeker" means any individual seeking employment, career
27 guidance or counseling or employment related services or products.

28 "Job seeker contingent liability" means a provision in an
29 agreement between an employment agency and a job seeker
30 whereby the job seeker may become liable, in whole or in part, to
31 pay a fee, charge or commission of any amount, directly or
32 indirectly, on account of any service rendered by the employment
33 agency.

34 "Just cause for voluntary termination of employment by a job
35 seeker" means and includes, but is not limited to, cases in which
36 material misrepresentations of the terms or conditions of
37 employment have been relied upon by a job seeker who would not
38 have accepted the employment if the grounds for termination were
39 known before acceptance of the employment.

40 "License" means a license issued by the director to any person
41 to:

- 42 (1) Carry on the business of an employment agency; and
43 (2) Perform, as an agent of the agency, any of the functions
44 related to the operation of the agency.

45 "Performing artist" means a model, musical, theatrical or other
46 entertainment performer employed or engaged individually or in a
47 group.

1 "Person" means any natural person or legal representative,
2 partnership, corporation, company, trust, business entity or
3 association, and any agent, employee, salesperson, partner, officer,
4 director, member, stockholder, associate, trustee or cestuis que
5 trustent thereof.

6 "Prepaid computer job matching service" means any person
7 required to be registered under section 25 of **[this act]** P.L.1989,
8 c.331 (C.34:8-66) who is engaged in the business of matching job
9 seekers with employment opportunities, pursuant to an arrangement
10 under which the job seeker is required to pay a fee in advance of, or
11 contemporaneously with, the supplying of the matching, but which
12 does not otherwise involve services for the procurement of
13 employment by the person conducting the service.

14 "Primary location" means an address used for 90 or more
15 calendar days by a person for the conduct of an activity regulated
16 under **[this act]** P.L.1989, c.331 (C.34:8-43 et al.).

17 "Principal owner" means any person who, directly or indirectly,
18 holds a beneficial interest or ownership in an applicant or who has
19 the ability to control an applicant.

20 "Temporary employment" means employment in which the
21 duration is fixed as some definite agreed period of time or by the
22 occurrence of some specified event, either of which shall be clearly
23 stated to all parties at the time of referral to the employment.

24 "Temporary help service firm" means any person who operates a
25 business which consists of employing individuals directly or
26 indirectly for the purpose of assigning the employed individuals to
27 assist the firm's customers in the handling of the customers'
28 temporary, excess or special work loads, and who, in addition to the
29 payment of wages or salaries to the employed individuals, pays
30 federal social security taxes and State and federal unemployment
31 insurance; carries worker's compensation insurance as required by
32 State law; and sustains responsibility for the actions of the
33 employed individuals while they render services to the firm's
34 customers. A temporary help service firm is required to comply
35 with the provisions of P.L.1960, c.39 (C.56:8-1 et seq.).

36 (cf: P.L.1989, c.331, s.1)

37
38 14. This act shall take effect immediately.
39
40

41 STATEMENT

42
43 This bill provides certain protections to temporary laborers and
44 imposes requirements on temporary help service firms and third
45 party clients of those entities. Additionally, the bill provides that
46 the Department of Labor and Workforce Development will be
47 responsible for the oversight of temporary help service firms and
48 third party clients. Specifically, under the bill, a temporary help

1 service firm is required to provide a statement to temporary laborers
2 with the following information:

- 3 (1) the name of the temporary laborer;
- 4 (2) the name, address and telephone number of: (a) the
5 temporary help service firm, or the contact information of the firm's
6 agent facilitating the placement; (b) its workers' compensation
7 carrier; (c) the worksite employer or third party client; and (d) the
8 Department of Labor and Workforce Development;
- 9 (3) the name and nature of the work to be performed;
- 10 (4) the wages offered;
- 11 (5) the name and address of the assigned worksite of each
12 temporary laborer;
- 13 (6) the terms of transportation offered to the temporary laborer;
- 14 (7) a description of the position and whether it shall require any
15 special clothing, protective equipment and training and what will be
16 provided by the temporary help service firm or the third party
17 client, and any costs charged to the employee for supplies or
18 training;
- 19 (8) whether a meal or equipment is provided by the temporary
20 help service firm or the third party client, and the cost of the meal
21 and equipment;
- 22 (9) the schedule for multi-day assignments; and
- 23 (10) the length of the assignment.

24 Additionally, under the bill, a temporary help service firm is
25 required to keep certain records relating to its transactions with
26 temporary laborers, and to maintain the records for six years from
27 their creation. The Commissioner of Labor and Workforce
28 Development (commissioner) may inspect the records during
29 normal business hours.

30 Moreover, the bill provides that a temporary help service firm or
31 a third party client is prohibited from charging a fee to transport a
32 temporary laborer to or from the designated work site, and that a
33 temporary help service firm is responsible for the performance of
34 any person who transports a temporary laborer from the temporary
35 help service firm to a work site, unless the transporter is:

- 36 (1) a public mass transportation system;
- 37 (2) a common carrier;
- 38 (3) the temporary laborer providing his or her own
39 transportation; or
- 40 (4) selected exclusively by the temporary laborer for
41 transportation in a vehicle not owned or operated by the temporary
42 help service firm.

43 The bill also requires that, at the time of payment of wages, a
44 temporary help service firm is required to provide each temporary
45 laborer with a detailed itemized statement on the temporary
46 laborer's paycheck stub.

47 Further, under the bill, a temporary help service firm is
48 prohibited from restricting the right of a temporary laborer to accept

1 a permanent position with a third party client to whom the
2 temporary laborer has been referred for work, restricting the right of
3 a temporary laborer to accept a permanent position with another
4 employer, or restricting the right of that third party client to offer
5 employment to a temporary laborer.

6 In addition, the bill provides that a temporary help service firm
7 operating in the State is required to register with the commissioner
8 and is required to provide proof of an employer account number for
9 the payment of unemployment insurance contributions and valid
10 workers' compensation insurance. Under the bill, the commissioner
11 has the authority to deny, revoke, or refuse to renew any
12 registration for certain specified reasons.

13 Moreover, under the bill, a third party client is prohibited from
14 entering into a contract for the employment of temporary laborers
15 with any temporary help service firm that is not registered. The bill
16 also imposes a duty on the third party client to verify a temporary
17 help service firm's status with the commissioner.

18 The bill also makes it a violation for a temporary help service
19 firm or third party client to retaliate through discharge or in any
20 other manner against any temporary laborer for exercising any
21 rights granted under the bill. Under the bill, the termination or
22 disciplinary action by a temporary help service firm against a
23 temporary laborer within 90 days of the person's exercise of rights
24 under the bill raises a rebuttable presumption of having done so in
25 retaliation for the exercise of those rights.

26 In addition, a person aggrieved by a violation under the bill by a
27 temporary help service firm or a third party client may institute a
28 civil action in the Superior Court, and a temporary help service firm
29 aggrieved by a violation under the bill by a third party client may
30 institute a civil action in the Superior Court. The bill also provides
31 that actions may be brought by one or more temporary laborers for
32 and on behalf of themselves and other temporary laborers similarly
33 situated.

34 The bill amends existing law to distinguish between the terms
35 employment agency and temporary help service firm.