

34:11-4.1

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(Labor Laws)

LAWS OF: 1991

CHAPTER: 205

Bill No: A3061

Sponsor(s): Foy, Patero & LoBiondo

Date Introduced: March 1, 1990

Committee: Assembly: Labor

Senate: Labor, Industry & Professions

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: April 26, 1991

Senate: June 30, 1991

Date of Approval: July 12, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

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[THIRD REPRINT]
ASSEMBLY, No. 3061

STATE OF NEW JERSEY

INTRODUCED MARCH 1, 1990

By Assemblymen FOY, PATERO and LoBiondo

1 AN ACT ¹[modifying the penalty provisions] concerning the
2 administration¹ of certain State labor laws, and ¹[amending
3 R.S.34:11-58, P.L.1940, c.153, P.L.1965, c.173, and P.L.1966,
4 c.113] revising various parts of the statutory law¹.

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

8 1. Section 1 of P.L.1965, c.173 (C.34:11-4.1) is amended to
9 read as follows:

10 1. As used in this act:

11 a. "Employer" means any individual, partnership, association,
12 joint stock company, trust, corporation, the administrator or
13 executor of the estate of a deceased individual, or the receiver,
14 trustee, or successor of any of the same, employing any person in
15 this State.

16 For the purposes of this act the officers of a corporation and
17 any agents having the management of such corporation [who
18 knowingly permit the corporation to violate the provisions of
19 sections 2 and 3 of this act] shall be deemed to be the employers
20 of the employees of the corporation.

21 b. "Employee" means any person suffered or permitted to
22 work by an employer, except that independent contractors and
23 subcontractors[,] shall not be considered employees.

24 c. "Wages" means the direct monetary compensation for labor
25 or services rendered by an employee, where the amount is
26 determined on a time, task, piece, or commission basis excluding
27 any form of supplementary incentives and bonuses which are
28 calculated independently of regular wages and paid in addition
29 thereto.

30 d. "Commissioner" means the Commissioner of Labor [and
31 Industry].

32 (cf: P.L.1965, c.173, s.1)

33 2. Section 9 of P.L.1965, c.173 (C.34:11-4.9) is amended to
34 read as follows:

35 9. a. The commissioner shall enforce and administer the
36 provisions of this act and the commissioner or his authorized
37 representatives are empowered [to hold hearings and otherwise]
38 to investigate charges of violations of this act [and to institute
39 actions for penalties hereunder].

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALA committee amendments adopted April 2, 1990.

² Senate SLI committee amendments adopted October 15, 1990.

³ Senate floor amendments adopted June 20, 1991.

1 b. The commissioner or his authorized representatives are
2 empowered to enter and inspect such places, question such
3 employees and investigate such facts, conditions or matters as
4 they may deem appropriate to determine whether any person has
5 violated any provision of this act or any rule or regulation issued
6 hereunder or which may aid in the enforcement of the provisions
7 of this act.

8 c. The commissioner or his authorized representatives shall
9 have power to administer oaths and examine witnesses under
10 oath, issue subpoenas, compel the attendance of witnesses, and
11 the production of papers, books, accounts, records, payrolls,
12 documents, and testimony, and to take depositions and affidavits
13 in any proceeding before [said] the commissioner.

14 d. [In case of failure of any] If a person fails to comply with
15 any subpoena lawfully issued, or on the refusal of any witness to
16 testify to any matter regarding which he may be lawfully
17 interrogated, it shall be the duty of the [County] Superior Court,
18 on application by the commissioner, to compel obedience by
19 proceedings for contempt, as in the case of disobedience of the
20 requirements of a subpoena issued from such court or a refusal to
21 testify therein.

22 ¹e. The commissioner is authorized to supervise the payment
23 of amounts due to employees pursuant to Article 1 of chapter 11
24 of Title 34 of the Revised Statutes, and the employer may be
25 required to make these payments to the commissioner to be held
26 in a special account in trust for the employees, and paid on order
27 of the commissioner directly to the employee or employees
28 affected. The employer shall also pay the commissioner an
29 administrative fee equal to ³not less than 10% or more than³
30 25% of any payment made to the commissioner pursuant to this
31 section. ³The amount of the administrative fee shall be specified
32 in a schedule of fees to be promulgated by rule or regulation of
33 the commissioner in accordance with the "Administrative
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).³ The fee
35 shall be applied to enforcement and administration costs of the
36 Division of Workplace Standards in the Department of Labor.¹
37 (cf: P.L.1991, c.91, s.353)

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

40 10. Any employer who [knowingly and willfully] ²knowingly and
41 willfully² violates any [provisions] provision of ²[this act]
42 P.L.1965, c.173 (34:11-4.1 et seq.)² shall be guilty of a
43 [misdemeanor and, upon conviction thereof, shall be punished by a
44 fine of not less than \$100.00 nor more than \$500.00 for violations
45 thereof] disorderly persons offense and, upon conviction for a
46 ¹[first]¹ violation, shall be punished by a fine of not less than
47 \$100 nor more than ¹[\$250 and, upon conviction for any
48 subsequent violation, be punished by a fine of not more than \$500]
49 \$1,000¹. Each day during which any violation of this act
50 continues shall constitute a separate and distinct offense.

1 As an alternative to or in addition to any other sanctions
2 provided by law for violations of P.L.1965, c.173 (C.34:11-4.1
3 et seq.), when the Commissioner of Labor finds that an employer
4 has violated that act, the commissioner is authorized to assess
5 and collect administrative penalties, up to a maximum of \$250
6 for a first violation and up to a maximum of \$500 for each
7 subsequent violation, specified in a schedule of penalties to be
8 promulgated as a rule or regulation by the commissioner in
9 accordance with the "Administrative Procedure Act," P.L.1968,
10 c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed
11 by the commissioner pursuant to this section shall be final, unless
12 within 15 days after receipt of notice thereof by certified mail,
13 the person charged with the violation takes exception to the
14 determination that the violation for which the penalty is imposed
15 occurred, in which event final determination of the penalty shall
16 be made as a declaratory ruling under section 8 of P.L.1968,
17 c.410 (C.52:14B-8) and subject to review in the Appellate
18 Division of the Superior Court.] ³When determining the amount of
19 the penalty imposed because of a violation, the commissioner
20 shall consider factors which include the history of previous
21 violations by the employer, the seriousness of the violation, the
22 good faith of the employer and the size of the employer's
23 business. ³ No administrative penalty shall be levied pursuant to
24 this section unless the Commissioner of Labor provides the
25 alleged violator with notification of the violation and of the
26 amount of the penalty by certified mail and an opportunity to
27 request a hearing before the commissioner or his designee within
28 15 days following the receipt of the notice. If a hearing is
29 requested, the commissioner shall issue a final order upon such
30 hearing and a finding that a violation has occurred. If no hearing
31 is requested, the notice shall become a final order upon
32 expiration of the 15-day period. Payment of the penalty is due
33 when a final order is issued or when the notice becomes a final
34 order. Any penalty imposed pursuant to this section may be
35 recovered with costs in a summary proceeding commenced by the
36 commissioner pursuant to "the penalty enforcement law,"
37 N.J.S.2A:58-1 et seq. ² Any sum collected as a fine or penalty
38 pursuant to this section ²[or through a summary proceeding under
39 P.L.1965, c.173 (C.34:11-4.1 et seq.) pursuant to "the penalty
40 enforcement law," N.J.S.2A:58-1 et seq.,] ² shall be applied
41 toward ¹[the costs of the Department of Labor in enforcing the
42 provisions of P.L.1965, c.173 (C.34:11-4.1 et seq.)] enforcement
43 and administration costs of the Division of Workplace Standards
44 in the Department of Labor. ¹

45 (cf: P.L.1965, c.173, s.10)

46 4. R.S.34:11-58 is amended to read as follows:

47 34:11-58. The commissioner is authorized and empowered to
48 investigate any claim for wages due an employee and in such
49 investigation may summon the defendant, subpoena witnesses,
50 administer oaths, take testimony and shall upon such [hearing]

1 proceeding make a decision or award [where] when the sum in
2 controversy, exclusive of costs, does not exceed [\$2,000.00]
3 \$10,000.00.

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

6 Such judgment shall be entered in the same manner and have
7 the same effect and be subject to the same proceedings as are
8 judgments rendered in suits duly heard and determined by courts
9 of competent jurisdiction.

10 ¹The commissioner is authorized to supervise the payment of
11 amounts due to employees under an award made pursuant to this
12 section, and the employer may be required to make these
13 payments to the commissioner to be held in a special account in
14 trust for the employees, and paid on order of the commissioner
15 directly to the employee or employees affected. The employer
16 shall also pay the commissioner an administrative fee equal to
17 ³not less than 10% or more than³ 25% of any payment made to
18 the commissioner pursuant to this section. ³The amount of the
19 administrative fee shall be specified in a schedule of fees to be
20 promulgated by rule or regulation of the commissioner in
21 accordance with the "Administrative Procedure Act," P.L.1968,
22 c.410 (C.52:14B-1 et seq.).³ The fee shall be applied to
23 enforcement and administration costs of the Division of
24 Workplace Standards in the Department of Labor.¹

25 (cf: P.L.1985, c.135, s.1)

26 5. Section 23 of P.L.1966, c.113 (C.34:11-56a22) is amended to
27 read as follows:

28 23. Any employer who willfully hinders or delays the
29 commissioner, the director or their authorized representatives in
30 the performance of his duties in the enforcement of this act, or
31 fails to make, keep, and preserve any records as required under
32 the provisions of this act, or falsifies any such record, or refuses
33 to make any such record accessible to the commissioner, the
34 director or their authorized representatives upon demand, or
35 refuses to furnish a sworn statement of such record or any other
36 information required for the proper enforcement of this act to
37 the commissioner, the director or their authorized
38 representatives upon demand, or pays or agrees to pay wages at a
39 rate less than the rate applicable under this act or any wage
40 order issued pursuant thereto, or otherwise violates any provision
41 of this act or of any regulation or order issued under this act shall
42 be guilty of a [misdemeanor and shall, upon conviction therefor,
43 be fined not less than \$100.00 nor more than \$500.00 or by
44 imprisonment of not less than 10 nor more than 90 days or by
45 both such fine and imprisonment] disorderly persons offense and
46 shall, upon conviction for a first violation, be punished by a fine
47 of not less than \$100 nor more than ¹[\$500] \$1,000¹ or by
48 imprisonment for not less than 10 nor more than 90 days or by
49 both the fine and imprisonment and, upon conviction for a second
50 or subsequent violation, be punished by a fine of not less than

1 \$500 nor more than \$1,000 or by imprisonment for not ¹less than
2 10 nor¹ more than 100 days or by both the fine and
3 imprisonment. Each week, in any day of which an employee is
4 paid less than the rate applicable to him under this act or under a
5 minimum fair wage order, and each employee so paid, shall
6 constitute a separate offense.

7 As an alternative to or in addition to any other sanctions
8 provided by law for violations of the "New Jersey State Wage and
9 Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), when the
10 Commissioner of Labor finds that an individual has violated that
11 act, the commissioner is authorized to assess and collect
12 administrative penalties, up to a maximum of \$250 for a first
13 violation and up to a maximum of \$500 for each subsequent
14 violation, specified in a schedule of penalties to be promulgated
15 as a rule or regulation by the commissioner in accordance with
16 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
17 et seq.). ²[Any administrative penalty imposed by the
18 commissioner pursuant to this section shall be final, unless within
19 15 days after receipt of notice thereof by certified mail, the
20 person charged with the violation takes exception to the
21 determination that the violation for which the penalty is imposed
22 occurred, in which event final determination of the penalty shall
23 be made as a declaratory ruling under section 8 of P.L.1968,
24 c.410 (C.52:14B-8) and subject to review in the Appellate
25 Division of the Superior Court.] ³When determining the amount
26 of the penalty imposed because of a violation, the commissioner
27 shall consider factors which include the history of previous
28 violations by the employer, the seriousness of the violation, the
29 good faith of the employer and the size of the employer's
30 business. ³No administrative penalty shall be levied pursuant to
31 this section unless the Commissioner of Labor provides the
32 alleged violator with notification of the violation and of the
33 amount of the penalty by certified mail and an opportunity to
34 request a hearing before the commissioner or his designee within
35 15 days following the receipt of the notice. If a hearing is
36 requested, the commissioner shall issue a final order upon such
37 hearing and a finding that a violation has occurred. If no hearing
38 is requested, the notice shall become a final order upon
39 expiration of the 15-day period. Payment of the penalty is due
40 when a final order is issued or when the notice becomes a final
41 order. Any penalty imposed pursuant to this section may be
42 recovered with costs in a summary proceeding commenced by the
43 commissioner pursuant to "the penalty enforcement law,"
44 N.J.S.2A:58-1 et seq. ²Any sum collected as a fine or penalty
45 pursuant to this section ²[or through a summary proceeding under
46 P.L.1965, c.173 (C.34:11-4.1 et seq.) pursuant to "the penalty
47 enforcement law," N.J.S.2A:58-1 et seq.,] ²shall be applied
48 toward ¹[the costs of the Department of Labor in enforcing the
49 "New Jersey State Wage and Hour Law," P.L.1966, c.113
50 (C.34:11-56a et seq.).] enforcement and administration costs of

1 the Division of Workplace Standards in the Department of Labor.¹
2 (cf: P.L.1966, c.113, s.23)

3 6. Section 19 of P.L.1940, c.153 (C.34:2-21.19) is amended to
4 read as follows:

5 19. Whoever employs or permits or suffers any minor to be
6 employed or to work in violation of this act, or of any order or
7 ruling issued under the provisions of this act, or obstructs the
8 Department of Labor, its officers or agents, or any other person
9 authorized to inspect places of employment under this act, and
10 whoever, having under his control or custody any minor, permits
11 or suffers him to be employed or to work in violation of this act,
12 shall be guilty of an offense. [Where] ¹[When] If¹ a defendant
13 acts knowingly, an offense under this section shall be a crime of
14 the fourth degree. Otherwise it shall be a disorderly persons
15 offense ¹and the defendant shall, upon conviction for a violation,
16 be punished by a fine of not less than \$100 nor more than
17 \$1,000¹. Each day during which any violation of this act
18 continues shall constitute a separate and distinct offense, and the
19 employment of any minor in violation of the act shall with
20 respect to each minor so employed, constitute a separate and
21 distinct offense.

22 As an alternative to or in addition to any other sanctions
23 provided by law for violations of P.L.1940, c.153 (C.34:2-21.1
24 et seq.), when the Commissioner of Labor finds that an individual
25 has violated that act, the commissioner is authorized to assess
26 and collect administrative penalties, up to a maximum of \$250
27 for a first violation and up to a maximum of \$500 for each
28 subsequent violation, specified in a schedule of penalties to be
29 promulgated as a rule or regulation by the commissioner in
30 accordance with the "Administrative Procedure Act," P.L.1968,
31 c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed
32 by the commissioner pursuant to this section shall be final, unless
33 within 15 days after receipt of notice thereof by certified mail,
34 the person charged with the violation takes exception to the
35 determination that the violation for which the penalty is imposed
36 occurred, in which event final determination of the penalty shall
37 be made as a declaratory ruling under section 8 of P.L.1968,
38 c.410 (C.52:14B-8) and subject to review in the Appellate
39 Division of the Superior Court.] ³When determining the amount of
40 the penalty imposed because of a violation, the commissioner
41 shall consider factors which include the history of previous
42 violations by the employer, the seriousness of the violation, the
43 good faith of the employer, and the size of the employer's
44 business. ³ No administrative penalty shall be levied pursuant to
45 this section unless the Commissioner of Labor provides the
46 alleged violator with notification of the violation and of the
47 amount of the penalty by certified mail and an opportunity to
48 request a hearing before the commissioner or his designee within
49 15 days following the receipt of the notice. If a hearing is
50 requested, the commissioner shall issue a final order upon such

1 hearing and a finding that a violation has occurred. If no hearing
 2 is requested, the notice shall become a final order upon
 3 expiration of the 15-day period. Payment of the penalty is due
 4 when a final order is issued or when the notice becomes a final
 5 order. Any penalty imposed pursuant to this section may be
 6 recovered with costs in a summary preceeding commenced by the
 7 commissioner pursuant to "the penalty enforcement law,"
 8 N.J.S.2A:58-1 et seq.² Any sum collected as a fine or penalty
 9 pursuant to this section ²[or through a summary proceeding under
 10 P.L.1940, c.153 (C.34:2-21.1 et seq.) and pursuant to "the penalty
 11 enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied
 12 toward ¹[the costs of the Department of Labor in enforcing the
 13 provisions of P.L.1940, c.153 (C.34:2-21.1 et seq.)] enforcement
 14 and administration costs of the Division of Workplace Standards
 15 in the Department of Labor.¹

16 (cf: P.L.1981, c.331, s.9)

17 ¹⁷ R.S.34:7-3 is amended to read as follows:

18 34:7-3. Each application for examination for any license issued
 19 by the bureau shall be accompanied by fees as set forth in this
 20 section. Such fees shall be made payable to the Commissioner of
 21 Labor. There shall be no other charge for the initial examination
 22 or for one re-examination taken within six months of the original
 23 examination. Failure to appear for examination or to obtain a
 24 passing grade shall not entitle the applicant to a refund of any
 25 fee.

26	Original application	[\$15.00]	<u>\$25</u>
27	Raise of grade or additional		
28	classification application	[\$10.00]	<u>\$20</u>
29	Additional examinations, in excess of		
30	2, on any application	[\$ 7.50]	<u>\$10</u>
31	Annual license renewal if requested no		
32	later than expiration date	[\$ 5.00]	<u>\$10</u>
33	License renewal for 3 years if requested		
34	no later than expiration date	[\$10.00]	<u>\$20</u>
35	Application for renewal, if made not more		
36	than 3 years after expiration and if all		
37	penalties lawfully imposed upon the applicant		
38	by the Mechanical Inspection Bureau have		
39	been paid	1 year.....	[\$ 7.50] <u>\$15</u>
40	3 years	[\$15.00] <u>\$30</u>

41
 42 Upon failure to so renew a license for a period of 3 years and 1
 43 day after expiration date all records pertaining to such license
 44 may be destroyed pursuant to the ["Destruction of Public Records
 45 Law of 1953"] "Destruction of Public Records Law (1953),"
 46 P.L.1953, c.410 (C.47:3-15 et seq.) and any application for
 47 renewal of the license will be treated as an original application
 48 for examination. All fees collected under this article shall be
 49 [paid by the commissioner into the State Treasury and shall
 50 become a part of the State General Fund] applied toward

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

3 Any license may be revoked or suspended by the commissioner
4 upon receiving evidence of incompetence, negligence,
5 intoxication while on duty or other reason establishing that the
6 licensee is unfit to hold a license, after notice is given to the
7 licensee and a hearing afforded him before one or more members
8 of the examining board. In case revocation or suspension is
9 recommended by the member or members conducting the hearing,
10 it shall not be acted upon by the commissioner until at least 15
11 days' notice of the recommendation shall be given to the licensee
12 and an opportunity afforded him within that time period to ask
13 for a rehearing before the commissioner. After rehearing, if
14 requested, the commissioner may affirm, modify or dismiss such
15 recommendation. Pending a hearing or rehearing as provided in
16 this paragraph, the commissioner may authorize the suspension of
17 a license in the interest of health and safety.¹

18 (cf: P.L.1982, c.54, s.1)

19 18. R.S.34:7-6 is amended to read as follows:

20 34:7-6. Any person who shall violate any of the provisions of
21 this article shall be liable to a penalty of not less than [ten
22 dollars (\$10.00)] \$50 nor more than [one hundred dollars (\$100.00)]
23 \$500, to be collected by suit or compromise. An officer of a
24 corporation violating any of the provisions of this article shall be
25 personally liable for the violation by such corporation. Any
26 manager, superintendent or other person in charge of any building
27 or other places in which this article is violated shall be liable for
28 such violation. Any sum collected as a penalty pursuant to this
29 section shall be applied toward enforcement and administration
30 costs of the Division of Workplace Standards in the Department
31 of Labor.¹

32 (cf: P.L.1946, c.249, s.7)

33 19. R.S.34:7-15 is amended to read as follows:

34 34:7-15. a. For each internal and external inspection of
35 vessels specified in subsection a. of R.S. 34:7-14, which shall
36 include hydrostatic test if found necessary, the owner, lessee or
37 operator of the vessel shall pay to the Department of Labor a fee
38 of [~~\$15.00~~] \$25 for vessels having 10 and not over 60 square feet
39 of heating surface, [~~\$20.00~~] \$35 for vessels over 60 and not over
40 1,000 square feet of heating surface and [~~\$35.00~~] \$50 for vessels
41 over 1,000 square feet of heating surface; plus the actual travel
42 expenses of the inspector.

43 b. For each inspection of vessels specified in subsection b. of
44 R.S.34:7-14, the owner, lessee or operator of the vessel shall pay
45 to the Department of Labor the actual travel expenses of the
46 inspector and a fee of \$5.00 for vessels not over 30 square feet
47 size, \$10.00 for vessels over 30 but not over 60 square feet size,
48 \$15.00 for vessels over 60 but not over 100 square feet size,
49 \$20.00 for vessels over 100 square feet size. In determining size
50 rating, the extreme diameter multiplied by the vessel length, or

1 equivalent dimensions, shall be used.

2 c. The Division of Workplace Standards shall maintain an
3 inspection service for the purpose of providing shop inspection of
4 those vessels regulated by chapter 7 of Title 34 of the Revised
5 Statutes, which are under construction or new, or which are to be
6 used for a purpose other than that for which originally approved,
7 or which have never been subject to a previous inspection in New
8 Jersey. This service shall be provided for New Jersey builders,
9 owners or users of such vessels upon their request only. The fees
10 for this service, exclusive of the actual travel expenses of the
11 inspector, which also shall be paid, shall be set by the
12 commissioner and shall be: (1) not more than \$25.00 for each
13 vessel inspected, provided that he may establish a charge for
14 each visit, for the purpose of inspection, of not less than \$50.00
15 nor more than ~~[\$150.00]~~ \$300; (2) for construction review of
16 vessel not designed in accordance with standards set by the Board
17 of Boiler, Pressure Vessel and Refrigeration Rules, not less than
18 ~~[\$200.00]~~ \$500 nor more than ~~[\$500.00]~~ \$1,500.¹

19 (cf: P.L.1985, c.109, s.2)

20 ¹10. R.S.34:7-16 is amended to read as follows:

21 34:7-16. In addition to the annual internal and external
22 inspection, there may be an external inspection if found
23 necessary of each vessel specified in [section 34:7-14a. of this
24 Title] subsection a. of R.S.34:7-14, which shall be made as nearly
25 as may be at the expiration of 6 months from each annual
26 inspection and for which the owner, lessee or operator shall pay
27 to the inspector a fee of ~~[\$15.00]~~ \$25, in addition to the actual
28 cost of travel incurred by the inspector in going to and returning
29 from the place of inspection. Each vessel insured by an insurance
30 company may also be given an external inspection by a certified
31 inspector.¹

32 (cf: P.L.1982, c.54, s.4)

33 ¹11. R.S.34:7-19 is amended to read as follows:

34 34:7-19. An insurance company making an inspection of any
35 vessel specified in [section] R.S.34:7-14 [of this Title] shall make
36 a report of such inspection to the commissioner in such manner
37 and at such intervals as he may by rules provide. and shall pay the
38 commissioner a fee of not less than \$2.00 nor more than ~~[\$5.00]~~
39 \$10 as set by the commissioner, payable by and collected from
40 the owner, lessee or operator by the insurer or inspector at the
41 time of inspection for each boiler insured within the State. It is
42 further provided that payment of these fees may be made by the
43 insurer through other methods when required or allowed by the
44 commissioner, as provided in [section] R.S.34:7-18 [of this Title].¹

45 (cf: P.L.1967, c.211, s.5)

46 ¹12. R.S.34:7-25 is amended to read as follows:

47 34:7-25. All refrigeration systems using flammable or toxic
48 refrigerants of over three tons of refrigerating capacity or
49 requiring over six driving horsepower, and all refrigeration
50 systems using nonflammable and nontoxic refrigerants of over

1 18 tons of refrigerating capacity or requiring over 36 driving
2 horsepower, having relief devices set over 15 pounds per square
3 inch gage and used in a plant of any size or storage capacity,
4 shall be inspected annually by an inspector of the Mechanical
5 Inspection Bureau or of an insurance company, as provided in
6 [section 34:7-14a. of this Title] subsection a. of R.S.34:7-14; and
7 the owner, lessee or operator shall comply with the
8 recommendations of the inspector in conformity with the rules
9 and regulations adopted by the Board of Boiler, Pressure Vessel
10 and Refrigeration Rules of the Mechanical Inspection Bureau and
11 approved by the commissioner.

12 The fees for such inspection by an inspector of the Mechanical
13 Inspection Bureau shall be as follows:

14 a. Refrigeration systems of 25 tons and over, but less than 300
15 tons of refrigerating capacity, the sum of [~~\$35.00~~] \$50 for each
16 inspection, plus the actual travel expense of the inspector;

17 b. Refrigeration systems under 25 tons and over 3 tons of
18 refrigerating capacity, the sum of [~~\$20.00~~] \$35 for each
19 inspection, plus the actual travel expense of the inspector;

20 c. Refrigeration systems of 300 tons or over of refrigerating
21 capacity, the sum of [~~\$45.00~~] \$70 for each inspection, plus the
22 actual travel expense of the inspector.

23 The fees and travel expenses shall be paid to the inspector, at
24 the time of inspection, by the owner, lessee or operator of the
25 refrigeration system.

26 The annual inspection and inspection reports of refrigeration
27 systems by insurance companies licensed to do business within
28 this State and otherwise complying with this chapter shall be
29 accepted in lieu of other inspections. Each insurance company
30 shall file with the commissioner a report of each inspection and
31 shall pay to him a fee of [~~\$7.50~~] \$10 for each annual refrigeration
32 system inspection, to be collected by the insurer from the owner
33 or lessee of the plant inspected. After the owner, lessee or
34 operator has complied with the rules or regulations, a certificate
35 shall be issued by the Mechanical Inspection Bureau, which
36 certificate shall be valid for one year and be the authority for the
37 operation of the refrigeration system during such time. Upon
38 expiration, the certificate shall be renewed by the Mechanical
39 Inspection Bureau if the refrigeration system is found to be in
40 proper condition for operation within the prescribed rules of the
41 Mechanical Inspection Bureau. All fees collected under [this act]
42 chapter 7 of Title 34 of the Revised Statutes shall be [paid by the
43 commissioner or his duly authorized representative into the State
44 Treasury and shall become a part of the State General Fund]
45 applied toward enforcement and administration costs of the
46 Division of Workplace Standards in the Department of Labor.¹

47 (cf: P.L.1982, c.54, s.5)

48 ¹13. R.S.34:7-26 is amended to read as follows:

49 34:7-26. Any owner, lessee, seller or operator of any steam or
50 hot water boiler or similar equipment specified in R.S.34:7-14,

1 pressure vessel or refrigeration system who shall sell, use, cause
2 or allow to be used such steam or hot water boiler or similar
3 equipment specified in R.S.34:7-14. pressure vessel or
4 refrigeration system in violation of any provision of this article
5 shall be liable to a penalty of not less than \$500.00 nor more than
6 \$1,000.00 for each first offense and not less than \$500.00 nor
7 more than \$2,500.00 for each subsequent offense, to be collected
8 by a civil action or, in the commissioner's discretion, to be
9 imposed by the commissioner as a compromise. All civil actions
10 shall be brought by the Department of Labor as plaintiff, and may
11 be brought in the Special Civil Part, Law Division of the Superior
12 Court of the county, or municipal court of the municipality,
13 wherein such violation shall occur. Any sum collected as a
14 penalty pursuant to this section shall be applied toward
15 enforcement and administration costs of the Division of
16 Workplace Standards in the Department of Labor.¹

17 (cf: P.L.1987, c.336, s.2)

18 ¹14. Section 16 of P.L.1941, c.308 (C.34:6-136.16) is amended
19 to read as follows:

20 16. Enforcement, administration, oaths, affidavits, subpoenas,
21 witnesses.

22 (a) The commissioner shall enforce and administer the
23 provisions of this act and the commissioner is directed to make
24 all inspections and investigations necessary for proper
25 enforcement and administration thereof.

26 (b) In the administration of this act the commissioner shall
27 have the power to administer oaths, take affidavits and the
28 depositions of witnesses and issue subpoenas for and compel the
29 attendance of witnesses and the production of papers, books,
30 accounts, payrolls, documents, records, testimony and other
31 evidence of whatever description. In the case of failure of any
32 person to comply with any order of the commissioner or
33 subpoena, lawfully issued, or on the refusal of any witness to
34 produce evidence or to testify as to any matter regarding which
35 he may be lawfully interrogated, it shall be the duty of [any
36 District Court or County Court] the Special Civil Part, Law
37 Division, of the Superior Court or the Superior Court, or the
38 judge thereof, upon application by the commissioner to compel
39 obedience by proceedings for contempt, as in the case of
40 disobedience of a subpoena issued for such court or a refusal to
41 testify therein.

42 (c) Notwithstanding the provisions of any other general, local
43 or special law, all fees and other moneys derived from the
44 operation of this act shall be [remitted to the State Treasurer and
45 by him deposited in the General State Fund and the cost of
46 administration of this act shall be included in the annual
47 appropriation law] applied toward enforcement and
48 administration costs of the Division of Workplace Standards in
49 the Department of Labor.¹

50 (cf: P.L.1950, c.42, s.1)

1 ¹15. Section 19 of P.L.1941, c.308 (C.34:6-136.19) is amended
2 to read as follows:

3 19. Penalties. Any employer or person who: (1) Directly or
4 indirectly in any way, distributes, delivers or causes to be
5 distributed or delivered, or sells or causes to be sold, articles or
6 materials for industrial home work in violation of any provision of
7 this act or of any rule, regulation or order issued thereunder; or
8 (2) Violates or fails to comply with any provision of this act or
9 any rule, regulation or order issued thereunder; or (3) Does not
10 possess a valid employer's permit issued by the commissioner
11 pursuant to section 7 of this act or fails to comply with any
12 provision or condition of that permit; or (4) Refuses to allow the
13 commissioner or his authorized representative to enter his place
14 of business or other place for the purpose of investigating in the
15 enforcement of this act, and of inspecting any records required to
16 be kept by section 10 of this act; or (5) Willfully makes a false
17 statement or representation in order to lower the amount of fees
18 due from him under this act; or (6) Makes any deduction from the
19 wages or salary of a home worker in order to pay any portion of a
20 payment which the employer or person is required to make by this
21 act; shall be guilty of a disorderly persons offense and, upon
22 conviction for a violation, shall be punished by a fine of not less
23 than \$100 nor more than \$1,000. If an employer or person
24 knowingly violates this act or if an employer or person commits a
25 second violation or multiple violation of this act, that employer
26 or person shall be guilty of a crime of the fourth degree. Each
27 day a violation is continued and each home worker engaged in
28 industrial home work directly or indirectly for or in behalf of the
29 employer or person in violation of any provision of this act or any
30 rule, regulation or order issued thereunder shall be considered a
31 separate offense.

32 As an alternative to or in addition to any other sanctions
33 provided by law for violations of ²[this act,] any provision of
34 Article 12 of chapter 6 of Title 34 of the Revised Statutes² when
35 the Commissioner of Labor finds that an employer has violated
36 ²[this act] that article², the commissioner is authorized to assess
37 and collect administrative penalties, up to a maximum of \$250
38 for a first violation and up to a maximum of \$500 for each
39 subsequent violation, specified in a schedule of penalties to be
40 promulgated as a rule or regulation by the commissioner in
41 accordance with the "Administrative Procedure Act," P.L.1968,
42 c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed
43 by the commissioner pursuant to this section shall be final, unless
44 within 15 days after receipt of notice thereof by certified mail,
45 the person charged with the violation takes exception to the
46 determination that the violation for which the penalty is imposed
47 occurred, in which event final determination of the penalty shall
48 be made as a declaratory ruling under section 8 of P.L.1968,
49 c.410 (C.52:14B-8) and subject to review in the Appellate
50 Division of the Superior Court.] ³When determining the amount

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

25 (cf: P.L.1989, c.161, s.1)

26 ¹16. Section 7 of P.L.1960, c.55 (C.21:1A-134) is amended to
27 read as follows:

28 7. Upon receipt of an application for a permit to manufacture,
29 store, sell, transport or use explosives, and before the permit is
30 issued, the commissioner shall make or cause to be made an
31 investigation for the purpose of ascertaining if all applicable
32 requirements of this act have been met. The commissioner shall
33 not issue a permit to manufacture, sell, store, transport or use
34 explosives unless all the requirements of this act have been met.
35 All permits issued in accordance with the provisions of this act
36 shall be subject to any amendments hereafter made to this act.

37 A. An applicant for a permit shall, at his own expense, furnish
38 whatever pertinent information the commissioner may require in
39 addition to that specified herein. Application forms shall be
40 furnished by the Department of Labor [and Industry].

41 B. An applicant for a permit to manufacture, sell, transport,
42 store or use explosives must:

43 (a) be at least 21 years of age;

44 (b) have a reasonable understanding of the English language;

45 (c) present satisfactory evidence of experience in the
46 manufacture, sale, transportation, storage or use of explosives;

47 (d) demonstrate by written, oral or field examination, as the
48 commissioner may direct, adequate knowledge of the safe
49 manufacture, sale, transportation, storage or use of explosives
50 and of the provisions of this act; and

1 (e) be of good moral character and must never have been
2 disloyal to the United States; and

3 it shall be within the sole discretion of the commissioner to
4 determine whether an applicant who has been convicted of a
5 crime involving moral turpitude has the good moral character
6 necessary for a permit. It shall also be within the reasonable
7 discretion of the commissioner to deny the issuance of a permit
8 where he concludes, after a full examination of the qualifications
9 of an applicant, that to grant a permit would be dangerous to the
10 health, safety and welfare of the people of the State of New
11 Jersey. The failure of a holder of a permit to maintain the
12 qualifications stated herein shall be good cause for the revocation
13 of the permit.

14 C. When the applicant for a permit to manufacture, sell,
15 transport, store or use explosives is a firm, association or
16 corporation, the applicant must demonstrate that such activities
17 with regard to explosives will be under the direct supervision of a
18 person who meets the qualifications stated above.

19 D. Permits shall be valid for one year unless sooner revoked.
20 Permits which expire on July 1, 1960 may be renewed by the
21 commissioner at his discretion for a period of not less than three
22 months nor more than 15 months, and permits renewed after such
23 a period shall thereafter be valid for one year unless sooner
24 revoked. The fee for all permits shall be fixed by the
25 commissioner on a yearly basis or, for periods of less than a year,
26 in amounts proportionately less than the annual fee.

27 E. The application for any permit must be accompanied by a
28 fee established by regulation in accordance with the following
29 schedule:

30 (a) To manufacture--not less than [~~\$50.00~~] \$200 nor more than
31 [~~\$500.00~~] \$1,000;

32 (b) To sell--not less than \$25.00 nor more than [~~\$200.00~~] \$300;

33 (c) [~~To transport-- \$20.00~~] (deleted by amendment, P.L. ,
34 c.);

35 (d) To store--not less than \$25.00 nor more than \$150.00; but
36 if the explosives are in excess of 30,000 pounds, then the fee shall
37 be not less than \$150.00 nor more than [~~\$300.00~~] \$750;

38 (e) To use--not more than [~~\$100.00~~] \$200;

39 (f) For storage, transportation, and use of smokeless powder in
40 amounts in excess of 36 pounds, but not in excess of 100 pounds
41 and black powder in amounts in excess of 5 pounds but not in
42 excess of 100 pounds which is used by private persons for the
43 hand loading of small arms ammunition and which is not for
44 resale--not less than \$2.00 nor more than \$10.00; where any such
45 smokeless and black powder is in excess of 100 pounds, the fee
46 shall be increased \$10.00 for each additional 100 pounds, or
47 fraction thereof.

48 All fees derived from the operation of this act shall be applied
49 toward enforcement and administration costs of the Division of
50 Workplace Standards in the Department of Labor.¹

51 (cf: P.L.1971, c.154, s.4)

1 ¹17. Section 13 of P.L.1960, c.55 (C.21:1A-140) is amended to
2 read as follows:

3 13. It shall be unlawful for any person, partnership, firm,
4 association or corporation, and any officer, agent or employee
5 thereof, to violate or proximately contribute to the violation of
6 any of the provisions of this act or of the regulations made
7 hereunder. The violation of this act by an employee, acting within
8 the scope of his authority, of any person, partnership, firm,
9 association, or corporation shall be deemed also to be the
10 violation of such person, partnership, firm, association or
11 corporation. Violations of the provisions of this act or rules and
12 regulations made hereunder shall be punishable for the first
13 offense by a penalty of not less than [~~\$25.00~~] \$100 nor more than
14 [~~\$500.00~~] \$5,000, for the second offense by a penalty of not less
15 than [~~\$150.00~~] \$300 nor more than [~~\$500.00~~] \$5,000 and for the
16 third and each succeeding offense by a penalty of not less than
17 [~~\$250.00~~] \$500 nor more than [~~\$1,000.00~~] \$10,000. The penalties
18 shall be collected by a civil action in the name of the
19 commissioner, to be instituted in the [county district court]
20 Special Civil Part, Law Division, of the Superior Court of the
21 county, or in municipal court of the municipality, where the
22 offense was committed. Where the violation consists of a refusal
23 to obey an order of the commissioner made under this act, each
24 day during which the violation continues shall constitute a
25 separate and distinct offense except during the time an appeal
26 from said order may be taken or is pending.

27 Any sum collected as a penalty pursuant to this section ²[or
28 through a summary proceeding under this act pursuant to "the
29 penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be
30 applied toward enforcement and administration costs of the
31 Division of Workplace Standards in the Department of Labor.

32 A. The Commissioner of Labor [and Industry], in his discretion,
33 is hereby authorized and empowered to compromise and settle
34 any claim for a penalty under this section for an amount that
35 appears appropriate and equitable under all of the circumstances.

36 B. Permits to sell, transport, store or use explosives are
37 revocable for cause by the commissioner. In any case where the
38 commissioner revokes a permit, he shall notify the permittee of
39 the revocation and shall provide, upon written request, for a
40 hearing within 10 days of the date of the revocation. Within 30
41 days from the termination of the hearing, the commissioner shall
42 issue an order approving, disapproving or modifying the
43 revocation. Permits to manufacture are exempt from revocation,
44 but the holders of such permits shall be subject in every other
45 respect to the provisions of this act and the rules and regulations
46 promulgated hereunder.

47 C. The requirements of this act concerning the distances of
48 explosives manufacturing buildings and magazines from each
49 other shall not be construed to apply to permanent buildings or
50 magazines that exist at the time that this act becomes effective

1 and which buildings and magazines have been used under
2 authority of the laws formerly governing the manufacture and
3 storage of explosives. This provision designating such explosives
4 manufacturing buildings and magazines already existing at the
5 effective date of this act as nonconforming uses shall not apply
6 to any explosives manufacturing buildings or magazines
7 constructed subsequent to the passage of this act nor to
8 extensions or additions to such buildings and magazines that are
9 made subsequent to the passage of this act.¹

10 (cf: P.L.1960, c.55, s.13)

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

13 11. Any employer who willfully hinders or delays the
14 commissioner in the performance of his duties in the enforcement
15 of this act, or fails to make, keep, and preserve any records as
16 required under the provisions of this act, or falsifies any such
17 record, or refuses to make any such record accessible to the
18 commissioner upon demand, or refuses to furnish a sworn
19 statement of such record or any other information required for
20 the proper enforcement of this act to the commissioner upon
21 demand, or pays or agrees to pay wages at a rate less than the
22 rate applicable under this act or otherwise violates any provision
23 of this act or of any regulation or order issued under this act shall
24 be guilty of a [misdemeanor] disorderly persons offense and shall,
25 upon conviction therefor, be fined not less than \$100.00 nor more
26 than [\$500.00] \$1,000 or be imprisoned for not less than 10 nor
27 more than 90 days, or by both such fine and imprisonment. Each
28 week, in any day of which a [workman] worker is paid less than
29 the rate applicable to him under this act and each [workman]
30 worker so paid, shall constitute a separate offense.

31 As an alternative to or in addition to any other sanctions
32 provided by law for violations of ²[this act] any provision of
33 P.L.1963, c.150 (C.34:11-56.25 et seq.)² , when the Commissioner
34 of Labor finds that an employer has violated ²[this] that² act, the
35 commissioner is authorized to assess and collect administrative
36 penalties, up to a maximum of \$250 for a first violation and up to
37 a maximum of \$500 for each subsequent violation, specified in a
38 schedule of penalties to be promulgated as a rule or regulation by
39 the commissioner in accordance with the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any
41 administrative penalty imposed by the commissioner pursuant to
42 this section shall be final, unless within 15 days after receipt of
43 notice thereof by certified mail, the person charged with the
44 violation takes exception to the determination that the violation
45 for which the penalty is imposed occurred, in which event final
46 determination of the penalty shall be made as a declaratory
47 ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject
48 to review in the Appellate Division of the Superior Court.] ³When
49 determining the amount of the penalty imposed because of a
50 violation, the commissioner shall consider factors which include

1 the history of previous violations by the employer, the seriousness
 2 of the violation, the good faith of the employer and the size of
 3 the employer's business.³ No administrative penalty shall be
 4 levied pursuant to this section unless the Commissioner of Labor
 5 provides the alleged violator with notification of the violation
 6 and of the amount of the penalty by certified mail and an
 7 opportunity to request a hearing before the commissioner or his
 8 designee within 15 days following the receipt of the notice. If a
 9 hearing is requested, the commissioner shall issue a final order
 10 upon such hearing and a finding that a violation has occurred. If
 11 no hearing is requested, the notice shall become a final order
 12 upon expiration of the 15-day period. Payment of the penalty is
 13 due when a final order is issued or when the notice becomes a
 14 final order. Any penalty imposed pursuant to this section may be
 15 recovered with costs in a summary preceeding commenced by the
 16 commissioner pursuant to "the penalty enforcement law,"
 17 N.J.S.2A:58-1 et seq.² Any sum collected as a fine or penalty
 18 pursuant to this section ²[or through a summary proceeding under
 19 this act pursuant to "the penalty enforcement law,"
 20 N.J.S.2A:58-1 et seq.,]² shall be applied toward enforcement and
 21 administration costs of the Division of Workplace Standards in
 22 the Department of Labor.¹

23 (cf: P.L.1963, c.150, s.11)

24 ¹19. Section 12 of P.L.1963, c.150 (C.34:11-56.36) is amended
 25 to read as follows:

26 12. As an alternative to any other sanctions or in addition
 27 thereto, herein or otherwise provided by law for violation of this
 28 act, the commissioner is authorized to supervise the payment of
 29 amounts due to [workmen] workers under this act, and the
 30 employer may be required to make these payments to the
 31 commissioner to be held in a special account in trust for the
 32 [workmen] workers, and paid on order of the commissioner
 33 directly to the [workman] worker or [workmen] workers affected.
 34 The employer shall also pay the commissioner an administrative
 35 fee equal to ³not less than 10% or more than³ 25% of any
 36 payment made to the commissioner pursuant to of this section.
 37 ³The amount of the administrative fee shall be specified in a
 38 schedule of fees to be promulgated by rule or regulation of the
 39 commissioner in accordance with the "Administrative Procedure
 40 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).³ The fee shall be
 41 applied toward enforcement and administration costs of the
 42 Division of Workplace Standards in the Department of Labor.¹

43 (cf: P.L.1963, c.150, s.12)

44 ¹20. Section 15 of P.L.1963, c.150 (C.34:11-56.39) is amended
 45 to read as follows:

46 15. Any employer who discharges or in any other manner
 47 discriminates against any [workman] worker because [such
 48 workman] the worker has made any complaint to his employer, to
 49 the public body or to the commissioner that he has not been paid
 50 wages in accordance with the provisions of this act, or because

1 [such workman] the worker has caused to be instituted or is about
2 to cause to be instituted any proceeding under or related to this
3 act, or because [such workman] the worker has testified or is
4 about to testify in any such proceeding shall be guilty of a
5 [misdemeanor] disorderly persons offense and shall, upon
6 conviction therefor, be fined not less than [~~\$50.00~~] \$100 nor more
7 than [~~\$200.00~~] \$1,000.

8 As an alternative to or in addition to any other sanctions
9 provided by law for violations of ²[this act] any provision of
10 P.L.1963, c.150 (C.34:11-56.25 et seq.)², when the Commissioner
11 of Labor finds that an employer has violated ²[this] that² act, the
12 commissioner is authorized to assess and collect administrative
13 penalties, up to a maximum of \$250 for a first violation and up to
14 a maximum of \$500 for each subsequent violation, specified in a
15 schedule of penalties to be promulgated as a rule or regulation by
16 the commissioner in accordance with the "Administrative
17 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any
18 administrative penalty imposed by the commissioner pursuant to
19 this section shall be final, unless within 15 days after receipt of
20 notice thereof by certified mail, the person charged with the
21 violation takes exception to the determination that the violation
22 for which the penalty is imposed occurred, in which event final
23 determination of the penalty shall be made as a declaratory
24 ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject
25 to review in the Appellate Division of the Superior Court.]

26 ³When determining the amount of the penalty imposed because of
27 a violation, the commissioner shall consider factors which include
28 the history of previous violations by the employer, the seriousness
29 of the violation, the good faith of the employer and the size of
30 the employer's business.³ No administrative penalty shall be
31 levied pursuant to this section unless the Commissioner of Labor
32 provides the alleged violator with notification of the violation
33 and of the amount of the penalty by certified mail and an
34 opportunity to request a hearing before the commissioner or his
35 designee within 15 days following the receipt of the notice. If a
36 hearing is requested, the commissioner shall issue a final order
37 upon such hearing and a finding that a violation has occurred. If
38 no hearing is requested, the notice shall become a final order
39 upon expiration of the 15-day period. Payment of the penalty is
40 due when a final order is issued or when the notice becomes a
41 final order. Any penalty imposed pursuant to this section may be
42 recovered with costs in a summary proceeding commenced by the
43 commissioner pursuant to "the penalty enforcement law,"
44 N.J.S.2A:58-1 et seq.² Any sum collected as a fine or penalty
45 pursuant to this section ²[or through a summary proceeding
46 under this act pursuant to "the penalty enforcement law,"
47 N.J.S.2A:58-1 et seq.,]² shall be applied toward enforcement and
48 administration costs of the Division of Workplace Standards in
49 the Department of Labor.¹
50 (cf: P.L.1963, c.150, s.15)

1 ¹21. Section 24 of P.L.1966, c.113 (C.34:11-56a23) is amended
2 to read as follows:

3 24. As an alternative to any other sanctions or in addition
4 thereto, herein or otherwise provided by law for violation of this
5 act or of any rule or regulations duly issued hereunder, the
6 Commissioner of Labor [and Industry] is authorized to supervise
7 the payment of amounts due to employees under this act, and the
8 employer may be required to make these payments to the
9 commissioner to be held in a special account in trust for the
10 employee, and paid on order of the commissioner directly to the
11 employee or employees affected. The employer shall also pay the
12 commissioner an administrative fee equal to ³not less than 10%
13 or more than³ 25% of any payment made to the commissioner
14 pursuant to this section. ³The amount of the administrative fee
15 shall be specified in a schedule of fees to be promulgated by rule
16 or regulation of the commissioner in accordance with the
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
18 seq.).³ The fee shall be applied toward enforcement and
19 administration costs of the Division of Workplace Standards in
20 the Department of Labor.¹

21 (cf: P.L.1966, c.113, s.24)

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

24 25. Any employer who discharges or in any other manner
25 discriminates against any employee because such employee has
26 made any complaint to his employer, to the commissioner, the
27 director or to their authorized representatives that he has not
28 been paid wages in accordance with the provisions of this act, or
29 because such employee has caused to be instituted or is about to
30 cause to be instituted any proceeding under or related to this act,
31 or because such employee has testified or is about to testify in
32 any such proceeding, or because such employee has served or is
33 about to serve on a wage board, shall be guilty of a
34 [misdemeanor] disorderly persons offense and shall, upon
35 conviction therefor, be fined not less than [~~\$50.00~~] \$100 nor more
36 than [~~\$200.00~~] \$1,000. Such employer shall be required, as a
37 condition of such judgment of conviction, to offer reinstatement
38 in employment to any such discharged employee and to correct
39 any such discriminatory action, and also to pay to any such
40 employee in full, all wages lost as a result of such discharge or
41 discriminatory action, under penalty of contempt proceedings for
42 failure to comply with such requirement.

43 As an alternative to or in addition to any other sanctions
44 provided by law for violations of ²[this act] P.L.1966, c.113
45 (C.34:11-56a et seq.)², when the Commissioner of Labor finds
46 that an employer has violated ²[this] that² act, the commissioner
47 is authorized to assess and collect administrative penalties, up to
48 a maximum of \$250 for a first violation and up to a maximum of
49 \$500 for each subsequent violation, specified in a schedule of
50 penalties to be promulgated as a rule or regulation by the

1 commissioner in accordance with the "Administrative Procedure
2 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative
3 penalty imposed by the commissioner pursuant to this section
4 shall be final, unless within 15 days after receipt of notice
5 thereof by certified mail, the person charged with the violation
6 takes exception to the determination that the violation for which
7 the penalty is imposed occurred, in which event final
8 determination of the penalty shall be made as a declaratory
9 ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject
10 to review in the Appellate Division of the Superior Court.] ³When
11 determining the amount of the penalty imposed because of a
12 violation, the commissioner shall consider factors which include
13 the history of previous violations by the employer, the seriousness
14 of the violation, the good faith of the employer and the size of
15 the employer's business.³ No administrative penalty shall be
16 levied pursuant to this section unless the Commissioner of Labor
17 provides the alleged violator with notification of the violation
18 and of the amount of the penalty by certified mail and an
19 opportunity to request a hearing before the commissioner or his
20 designee within 15 days following the receipt of the notice. If a
21 hearing is requested, the commissioner shall issue a final order
22 upon such hearing and a finding that a violation has occurred. If
23 no hearing is requested, the notice shall become a final order
24 upon expiration of the 15-day period. Payment of the penalty is
25 due when a final order is issued or when the notice becomes a
26 final order. Any penalty imposed pursuant to this section may be
27 recovered with costs in a summary ³[preceeding] proceeding³
28 commenced by the commissioner pursuant to "the penalty
29 enforcement law," N.J.S.2A:58-1 et seq.² Any sum collected as
30 a fine or penalty pursuant to this section ²[or through a summary
31 proceeding under this act pursuant to "the penalty enforcement
32 law," N.J.S.2A:58-1 et seq.,]² shall be applied toward
33 enforcement and administration costs of the Division of
34 Workplace Standards in the Department of Labor.¹

35 (cf: P.L.1966, c.113, s.25)

36 ¹23. Section 6 of P.L.1966, c.261 (C.34:6-47.7a) is amended to
37 read as follows:

38 6. Any person violating any of the provisions of P.L.1948,
39 c.249 (C.34:6-47.1 et seq.) shall be liable to a penalty of not less
40 than \$500.00 nor more than \$5,000.00 to be collected in a civil
41 action by a summary proceeding under "the penalty enforcement
42 law" (N.J.S.2A:58-1 et seq.). Any violation of P.L.1948, c.249
43 (C.34:6-47.1 et seq.) by an officer, agent or employee shall also
44 be a violation of P.L.1948, c.249 (C.34:6-47.1 et seq.) by his
45 employer if such employer had knowledge of and actual control
46 over the cause of such violation. Where the violation is of a
47 continuing nature each day during which it continues, shall
48 constitute an additional, separate and distinct offense. Any sum
49 collected as a fine or penalty pursuant to this section ²[or
50 through a summary proceeding under this act pursuant to "the

1 penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be
2 applied toward enforcement and administration costs of the
3 Division of Workplace Standards in the Department of Labor.

4 The commissioner is hereby authorized and empowered to
5 compromise and settle any claim for a penalty under this section
6 in such amount in the discretion of the commissioner as may
7 appear appropriate and equitable under all of the circumstances.¹
8 (cf: P.L.1987, c.124, s.3)

9 ¹24. Section 6 of P.L.1971, c.192 (C.34:8A-12) is amended to
10 read as follows:

11 6. Any person who violates any of the provisions of this act or
12 of the rules and regulations promulgated hereunder shall be a
13 disorderly person and upon conviction, for each violation, shall be
14 punished by a fine of not less than ~~[\$50.00]~~ \$100 and not more
15 than ~~[\$500.00]~~ \$1,000, or imprisonment for not more than 30 days,
16 or both. Any sum collected as a fine pursuant to this section
17 shall be applied toward enforcement and administration costs of
18 the Division of Workplace Standards in the Department of Labor.¹
19 (cf: P.L.1971, c.192, s.6)

20 ¹25. Section 8 of P.L.1971, c.192 (C.34:8A-14) is amended to
21 read as follows:

22 8. In addition to any other sanctions herein or otherwise
23 provided by law, the commissioner, upon notice and hearing, may
24 impose a penalty not exceeding \$500.00 for any violation of this
25 act or of any rule or regulation duly issued hereunder. Such
26 penalty shall be used for, and recovered by and in the name of the
27 commissioner in a civil action by a summary proceeding under
28 [the Penalty Enforcement Law] "the penalty enforcement law"
29 (N.J.S.2A:58-1). Where any violation of this act or of any rule or
30 regulation duly issued hereunder is of a continuing nature, each
31 day during which such violation continues after the date fixed by
32 the commissioner in any order or notice for the correction or
33 termination of such violation, shall constitute an additional
34 separate and distinct offense, except during the time an appeal
35 from said order or notice may be taken or is pending. It shall be
36 a complete defense to any action for a penalty pursuant to this
37 section for the defendant to prove that the violation complained
38 of is solely the result of the willful destruction by the occupants
39 of any camp; provided, that proof of such fact shall not alter any
40 duty to correct or terminate said violation as ordered by the
41 commissioner. Any sum collected as a penalty²[through a
42 summary proceeding under this act pursuant to "the penalty
43 enforcement law," N.J.S.2A:58-1 et seq.,] pursuant to this
44 section² shall be applied toward enforcement and administration
45 costs of the Division of Workplace Standards in the Department
46 of Labor.¹

47 (cf: P.L.1971, c.192, s.8)

48 ¹26. Section 9 of P.L.1975, c.105 (C.5:3-39) is amended to
49 read as follows:

50 9. The department shall determine a schedule of inspection

1 and permit fees. The department shall, from time to time, make
2 [such] further [recommendations to the Legislature as would
3 allow fee requirements to be] adjustments in the schedule to
4 bring it, as nearly as practicable and within the limits of
5 reasonableness, [brought] into line with the costs of implementing
6 the provisions of this act. The fees shall be applied toward
7 enforcement and administration costs of the Division of
8 Workplace Standards in the Department of Labor.¹

9 (cf: P.L.1975, c.105, s.9)

10 ³27. (New section) The Division of Workplace Standards shall
11 conduct an extensive orientation program to educate new and
12 existing employers about wage and hour laws and, as appropriate,
13 other laws pertaining to workplace standards. To implement the
14 program, the division may foster cooperative efforts with any
15 appropriate business organization, trade association, civic or
16 community organization or educational institution.³

17 ¹[7.] ³[27.1] ³28.³ This act shall take effect immediately.

18

19

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LABOR

21

22 Modifies certain penalties and enforcement provisions of State's
23 labor laws.

STATE OF NEW JERSEY

INTRODUCED MARCH 1, 1990

By Assemblymen FOY and PATERO

1 AN ACT modifying the penalty provisions of certain State labor
2 laws, and amending R.S.34:11-58, P.L.1940, c.153, P.L.1965,
3 c.173, and P.L.1966, c.113.

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

7 1. Section 1 of P.L.1965, c.173 (C.34:11-4.1) is amended to
8 read as follows:

9 1. As used in this act:

10 a. "Employer" means any individual, partnership, association,
11 joint stock company, trust, corporation, the administrator or
12 executor of the estate of a deceased individual, or the receiver,
13 trustee, or successor of any of the same, employing any person in
14 this State.

15 For the purposes of this act the officers of a corporation and
16 any agents having the management of such corporation [who
17 knowingly permit the corporation to violate the provisions of
18 sections 2 and 3 of this act] shall be deemed to be the employers
19 of the employees of the corporation.

20 b. "Employee" means any person suffered or permitted to
21 work by an employer, except that independent contractors and
22 subcontractors[,] shall not be considered employees.

23 c. "Wages" means the direct monetary compensation for labor
24 or services rendered by an employee, where the amount is
25 determined on a time, task, piece, or commission basis excluding
26 any form of supplementary incentives and bonuses which are
27 calculated independently of regular wages and paid in addition
28 thereto.

29 d. "Commissioner" means the Commissioner of Labor [and
30 Industry].

31 (cf: P.L.1965, c.173, s.1)

32 2. Section 9 of P.L.1965, c.173 (C.34:11-4.9) is amended to
33 read as follows:

34 9. a. The commissioner shall enforce and administer the
35 provisions of this act and the commissioner or his authorized
36 representatives are empowered [to hold hearings and otherwise]
37 to investigate charges of violations of this act [and to institute
38 actions for penalties hereunder].

39 b. The commissioner or his authorized representatives are
40 empowered to enter and inspect such places, question such

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 employees and investigate such facts, conditions or matters as
2 they may deem appropriate to determine whether any person has
3 violated any provision of this act or any rule or regulation issued
4 hereunder or which may aid in the enforcement of the provisions
5 of this act.

6 c. The commissioner or his authorized representatives shall
7 have power to administer oaths and examine witnesses, under
8 oath, issue subpoenas, compel the attendance of witnesses, and
9 the production of papers, books, accounts, records, payrolls,
10 documents, and testimony, and to take depositions and affidavits
11 in any proceeding before [said] the commissioner.

12 d. ~~[In case of failure of any]~~ If a person fails to comply with
13 any subpoena lawfully issued, or on the refusal of any witness to
14 testify to any matter regarding which he may be lawfully
15 interrogated, it shall be the duty of the [County] Superior Court,
16 on application by the commissioner, to compel obedience by
17 proceedings for contempt, as in the case of disobedience of the
18 requirements of a subpoena issued from such court or a refusal to
19 testify therein.

20 (cf: P.L.1965, c.173, s.9)

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

23 10. Any employer who [knowingly and willfully] violates any
24 [provisions] provision of this act shall be guilty of a [misdemeanor
25 and, upon conviction thereof, shall be punished by a fine of not
26 less than \$100.00 nor more than \$500.00 for violations thereof]
27 disorderly persons offense and, upon conviction for a first
28 violation, shall be punished by a fine of not less than \$100 nor
29 more than \$250 and, upon conviction for any subsequent violation,
30 be punished by a fine of not more than \$500. Each day during
31 which any violation of this act continues shall constitute a
32 separate and distinct offense.

33 As an alternative to or in addition to any other sanctions
34 provided by law for violations of P.L.1965, c.173 (C.34:11-4.1
35 et seq.), when the Commissioner of Labor finds that an employer
36 has violated that act, the commissioner is authorized to assess
37 and collect administrative penalties, up to a maximum of \$250
38 for a first violation and up to a maximum of \$500 for each
39 subsequent violation, specified in a schedule of penalties to be
40 promulgated as a rule or regulation by the commissioner in
41 accordance with the "Administrative Procedure Act," P.L.1968,
42 c.410 (C.52:14B-1 et seq.). Any administrative penalty imposed
43 by the commissioner pursuant to this section shall be final, unless
44 within 15 days after receipt of notice thereof by certified mail,
45 the person charged with the violation takes exception to the
46 determination that the violation for which the penalty is imposed
47 occurred, in which event final determination of the penalty shall
48 be made as a declaratory ruling under section 8 of P.L.1968,
49 c.410 (C.52:14B-8) and subject to review in the Appellate

1 Division of the Superior Court. Any sum collected as a fine or
2 penalty pursuant to this section or through a summary proceeding
3 under P.L.1965, c.173 (C.34:11-4.1 et seq.) pursuant to "the
4 penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied
5 toward the costs of the Department of Labor in enforcing the
6 provisions of P.L.1965, c.173 (C.34:11-4.1 et seq.).

7 (cf: P.L.1965, c.173, s.10)

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

9 34:11-58. The commissioner is authorized and empowered to
10 investigate any claim for wages due an employee and in such
11 investigation may summon the defendant, subpoena witnesses,
12 administer oaths, take testimony and shall upon such [hearing]
13 proceeding make a decision or award [where] when the sum in
14 controversy, exclusive of costs, does not exceed [\$2,000.00]
15 \$10,000.00.

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

18 Such judgment shall be entered in the same manner and have
19 the same effect and be subject to the same proceedings as are
20 judgments rendered in suits duly heard and determined by courts
21 of competent jurisdiction.

22 (cf: P.L.1985, c.135, s.1)

23 5. Section 23 of P.L.1966, c.113 (C.34:11-56a22) is amended to
24 read as follows:

25 23. Any employer who willfully hinders or delays the
26 commissioner, the director or their authorized representatives in
27 the performance of his duties in the enforcement of this act, or
28 fails to make, keep, and preserve any records as required under
29 the provisions of this act, or falsifies any such record, or refuses
30 to make any such record accessible to the commissioner, the
31 director or their authorized representatives upon demand, or
32 refuses to furnish a sworn statement of such record or any other
33 information required for the proper enforcement of this act to
34 the commissioner, the director or their authorized
35 representatives upon demand, or pays or agrees to pay wages at a
36 rate less than the rate applicable under this act or any wage
37 order issued pursuant thereto, or otherwise violates any provision
38 of this act or of any regulation or order issued under this act shall
39 be guilty of a [misdemeanor and shall, upon conviction therefor,
40 be fined not less than \$100.00 nor more than \$500.00 or by
41 imprisonment of not less than 10 nor more than 90 days or by
42 both such fine and imprisonment] disorderly persons offense and
43 shall, upon conviction for a first violation, be punished by a fine
44 of not less than \$100 nor more than \$500 or by imprisonment for
45 not less than 10 nor more than 90 days or by both the fine and
46 imprisonment and, upon conviction for a second or subsequent
47 violation, be punished by a fine of not less than \$500 nor more
48 than \$1,000 or by imprisonment for not more than 100 days or by
49 both the fine and imprisonment. Each week, in any day of which

1 an employee is paid less than the rate applicable to him under
2 this act or under a minimum fair wage order, and each employee
3 so paid, shall constitute a separate offense.

4 As an alternative to or in addition to any other sanctions
5 provided by law for violations of the "New Jersey State Wage and
6 Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), when the
7 Commissioner of Labor finds that an individual has violated that
8 act, the commissioner is authorized to assess and collect
9 administrative penalties, up to a maximum of \$250 for a first
10 violation and up to a maximum of \$500 for each subsequent
11 violation, specified in a schedule of penalties to be promulgated
12 as a rule or regulation by the commissioner in accordance with
13 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
14 et seq.). Any administrative penalty imposed by the
15 commissioner pursuant to this section shall be final, unless within
16 15 days after receipt of notice thereof by certified mail, the
17 person charged with the violation takes exception to the
18 determination that the violation for which the penalty is imposed
19 occurred, in which event final determination of the penalty shall
20 be made as a declaratory ruling under section 8 of P.L.1968,
21 c.410 (C.52:14B-8) and subject to review in the Appellate
22 Division of the Superior Court. Any sum collected as a fine or
23 penalty pursuant to this section or through a summary proceeding
24 under P.L.1965, c.173 (C.34:11-4.1 et seq.) pursuant to "the
25 penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied
26 toward the costs of the Department of Labor in enforcing the
27 "New Jersey State Wage and Hour Law," P.L.1966, c.113
28 (C.34:11-56a et seq.).

29 (cf: P.L.1966, c.113, s.23)

30 6. Section 19 of P.L.1940, c.153 (C.34:2-21.19) is amended to
31 read as follows:

32 19. Whoever employs or permits or suffers any minor to be
33 employed or to work in violation of this act, or of any order or
34 ruling issued under the provisions of this act, or obstructs the
35 Department of Labor, its officers or agents, or any other person
36 authorized to inspect places of employment under this act, and
37 whoever, having under his control or custody any minor, permits
38 or suffers him to be employed or to work in violation of this act,
39 shall be guilty of an offense. [Where] When a defendant acts
40 knowingly, an offense under this section shall be a crime of the
41 fourth degree. Otherwise it shall be a disorderly persons
42 offense. Each day during which any violation of this act
43 continues shall constitute a separate and distinct offense, and the
44 employment of any minor in violation of the act shall with
45 respect to each minor so employed, constitute a separate and
46 distinct offense.

47 As an alternative to or in addition to any other sanctions
48 provided by law for violations of P.L.1940, c.153 (C.34:2-21.1
49 et seq.), when the Commissioner of Labor finds that an individual

(1990)

1 has violated that act, the commissioner is authorized to assess
2 and collect administrative penalties, up to a maximum of \$250
3 for a first violation and up to a maximum of \$500 for each
4 subsequent violation, specified in a schedule of penalties to be
5 promulgated as a rule or regulation by the commissioner in
6 accordance with the "Administrative Procedure Act," P.L.1968,
7 c.410 (C.52:14B-1 et seq.). Any administrative penalty imposed
8 by the commissioner pursuant to this section shall be final, unless
9 within 15 days after receipt of notice thereof by certified mail,
10 the person charged with the violation takes exception to the
11 determination that the violation for which the penalty is imposed
12 occurred, in which event final determination of the penalty shall
13 be made as a declaratory ruling under section 8 of P.L.1968,
14 c.410 (C.52:14B-8) and subject to review in the Appellate
15 Division of the Superior Court. Any sum collected as a fine or
16 penalty pursuant to this section or through a summary proceeding
17 under P.L.1940, c.153 (C.34:2-21.1 et seq.) and pursuant to "the
18 penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied
19 toward the costs of the Department of Labor in enforcing the
20 provisions of P.L.1940, c.153 (C.34:2-21.1 et seq.).
21 (cf: P.L.1981, c.331, s.9)

22 7. This act shall take effect immediately.

23
24
25 *Sponsor*

STATEMENT

26
27 This bill revises various penalty and enforcement provisions of
28 some of the State's labor laws.

29 The bill increases the authority of the Department of Labor to
30 take action against employers who do not provide employees with
31 lawful compensation as required by P.L.1965, c.173 (C.34:11-4.1
32 et seq.) by: (1) removing from that law a provision requiring the
33 Department of Labor to prove that a corporate officer or
34 manager had knowledge of the existence of a violation before he
35 can be deemed to be an employer and charged with violating that
36 law; (2) removing a provision which provides that an employer
37 must have "knowingly and willfully" violated that law to be
38 guilty; (3) changing the penalty for a failure to provide lawful
39 compensation from a fine of not less than \$100 nor more than
40 \$500 for each violation (misdemeanor) to a fine of not less than
41 \$100 nor more than \$250 for a first violation and not more than
42 \$500 for any subsequent violation (disorderly persons offense)
43 (each day during which the violation continues would be a
44 separate and distinct offense); (4) authorizing the Commissioner
45 of Labor to impose and collect administrative penalties, up to a
46 maximum of \$250 for a first violation and up to \$500 for any
47 subsequent violation, as an alternative or in addition to any other
48 fine or penalty imposed under that law; and (5) empowering the
49 commissioner to investigate and decide any claim for wages due

1 an employee whenever the sum in controversy does not exceed
2 \$10,000 (currently, the amount is \$2,000).

3 The bill also revises the penalty and enforcement provisions of
4 the "New Jersey State Wage and Hour Law," P.L.1966, c.113
5 (C.34:11-56a et seq.), to: (1) provide that the current penalty for
6 that law of not less than \$100 nor more than \$500 for each
7 violation or imprisonment of not less than 10 nor more than 90
8 days, or both, would become the penalty for a first violation and
9 that the penalty for a second or subsequent violation of that law
10 would be a fine of not less than \$500 nor more than \$1,000 or
11 imprisonment for not more than 100 days or both (disorderly
12 persons offense); and (2) authorize the Commissioner of Labor to
13 impose administrative penalties of up to \$250 for a first violation
14 and up to \$500 for any subsequent violation of the "New Jersey
15 State Wage and Hour Law," as an alternative or in addition to any
16 other fine or penalty imposed under that act.

17 The bill further modifies the penalty and enforcement
18 provisions of the child labor law, P.L.1940, c.153 (C.34:2-21.1
19 et seq.), by authorizing the Commissioner of Labor to impose and
20 collect administrative penalties, up to a maximum of \$250 for a
21 first violation and up to \$500 for each subsequent violation, as an
22 alternative or in addition to any other fine or penalty imposed
23 under that law.

24 The administrative penalties authorized by the bill are to be
25 imposed in accordance with a schedule of penalties to be adopted
26 by rule or regulation of the commissioner pursuant to the
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
28 et seq.), and are required to be used exclusively for the funding of
29 enforcement actions taken by the department under the law
30 under which the penalty is recovered. Any administrative penalty
31 imposed by the commissioner is to be final unless, within 15 days
32 after receipt of notice thereof by certified mail, the person
33 charged with the violation takes exception to the determination
34 that the violation occurred. In that case, the final determination
35 is to be made as a declaratory ruling under section 8 of P.L.1968,
36 c.410 (C.52:14B-8), subject to review in the Appellate Division of
37 the Superior Court.

38

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LABOR

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42 Modifies certain penalties and enforcement provisions of State's
43 labor laws.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3061

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 2, 1990

The Assembly Labor Committee reports favorably Assembly Bill No. 3061 with committee amendments.

This bill revises various penalty and enforcement provisions of some of the State's labor laws.

As amended, the bill increases the authority of the Department of Labor to take action against employers who do not provide employees with lawful compensation as required by P.L.1965, c.173 (C.34:11-4.1 et seq.) by: (1) removing from that law a provision requiring the Department of Labor to prove that a corporate officer or manager had knowledge of the existence of a violation before he can be deemed to be an employer and charged with violating that law; (2) removing a provision which provides that an employer must have "knowingly and willfully" violated that law to be guilty; (3) changing the penalty for a failure to provide lawful compensation from a fine of not less than \$100 nor more than \$500 for each violation (misdemeanor) to a fine of not less than \$100 nor more than \$1,000 for a violation (disorderly persons offense) (each day during which the violation continues would be a separate and distinct offense); (4) authorizing the Commissioner of Labor to impose and collect administrative penalties, up to a maximum of \$250 for a first violation and up to \$500 for any subsequent violation, as an alternative or in addition to any other fine or penalty imposed under that law; and (5) empowering the commissioner to investigate and decide any claim for wages due an employee whenever the sum in controversy does not exceed \$10,000 (currently, the amount is \$2,000).

The bill also revises the penalty and enforcement provisions of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), to: (1) increasing the current penalty in that law of not less than \$100 nor more than \$500 for each violation or imprisonment of not less than 10 nor more than 90 days, or both, to a fine of not less than \$100 nor more than \$1,000 for a violation or imprisonment for not more than 100 days or both (disorderly persons offense); and (2) authorize the Commissioner of Labor to impose administrative penalties of up to \$250 for a first violation and up to \$500 for any subsequent violation of the "New Jersey State Wage and Hour Law," as an alternative or in addition to any other fine or penalty imposed under that act.

The bill further modifies the penalty and enforcement provisions of the child labor law, P.L.1940, c.153 (C.34:2-21.1 et seq.), by authorizing the Commissioner of Labor to impose and collect administrative penalties, up to a maximum of \$250 for a first violation and up to \$500 for each subsequent violation, as an alternative or in addition to any other fine or penalty imposed under that law.

The administrative penalties authorized by the bill are to be imposed in accordance with a schedule of penalties to be adopted by rule or regulation of the commissioner pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and are required to be used exclusively for the funding of enforcement and administration costs of the Division of Workplace Standards. Any administrative penalty imposed by the commissioner is to be final unless, within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation occurred. In that case, the final determination is to be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8), subject to review in the Appellate Division of the Superior Court.

Additional changes are made in the State's labor laws by the amendments adopted by the committee. The committee amendments:

1. Raise the minimum penalty for all disorderly persons offenses covered by the bill to not less than \$100 and the maximum penalty to not more than \$1,000;
2. Amend, to include minimum and maximum criminal and administrative penalties and fines which are identical to those of the bill, various penalty sections of workplace standards laws regarding industrial homework, prevailing wage standards, agricultural crew leaders and minimum wage;
3. Provide greater increases in the civil penalties (to a maximum of \$5,000 for a first or second offense and \$10,000 for a subsequent offense) for violations of standards regarding explosives;
4. Require employers to pay a 25% administrative charge in connection with the collection by the department of wages owed to their employees because of employer violations of wage payment, minimum wage or prevailing wage standards;
5. Increase licensing and inspection fees for explosives and for boiler and refrigeration systems and their operators; and
6. Dedicate revenues raised from fees, penalties and fines under all of the above-indicated laws (plus the laws regarding amusement ride and high voltage line safety) to fund enforcement and administration costs of the Division of Workplace Standards.

ASSEMBLY ALA COMMITTEE

ADOPTED

AMENDMENTS

APR 2 1990

(Proposed by Assemblyman Foy)

to

ASSEMBLY, No. 3061

(Sponsored by Assemblyman Foy and Patero)

REPLACE TITLE TO READ:

AN ACT ¹[modifying the penalty provisions] concerning the administration¹ of certain State labor laws, and ¹[amending R.S.34:11-58, P.L.1940, c.153, P.L.1965, c.173, and P.L.1966, c.113] revising parts of statutory law¹.

VARIOUS

REPLACE SECTION 2 TO READ:

2. Section 9 of P.L.1965, c.173 (C.34:11-4.9) is amended to read as follows:

9: a. The commissioner shall enforce and administer the provisions of this act and the commissioner or his authorized representatives are empowered [to hold hearings and otherwise] to investigate charges of violations of this act [and to institute actions for penalties hereunder].

b. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

c. The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before [said] the commissioner.

~~d. [In case of failure of any] If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the [County] Superior Court, on application by the commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.~~

*Article 1 of chapter
P.L. 1965, c. 173 of title
(C.34:11-4.1) 34 of the
statutes.
Revised*

1e. The commissioner is authorized to supervise the payment of amounts due to employees pursuant to ~~this act~~, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to 25% of any payment made to the commissioner pursuant to this section. The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1965, c.173, s.9)

REPLACE SECTION 3 TO READ:

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

10. Any employer who [knowingly and willfully] violates any [provisions] provision of this act shall be guilty of a [misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100.00 nor more than \$500.00 for violations thereof] disorderly persons offense and, upon conviction for a ¹[first]¹ violation, shall be punished by a fine of not less than \$100 nor more than ¹[\$250 and, upon conviction for any subsequent violation, be punished by a fine of not more than \$500] \$1,000¹. Each day during which any violation of this act continues shall constitute a separate and distinct offense.

As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.), when the Commissioner of Labor finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court. Any sum collected as a fine or penalty pursuant to this section or through a summary proceeding under P.L.1965, c.173 (C.34:11-4.1 et seq.) pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied

toward ¹[the costs of the Department of Labor in enforcing the provisions of P.L.1965, c.173 (C.34:11-4.1 et seq.)] enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1965, c.173, s.10)

~~REPLACE SECTION 4 TO READ:~~

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

34:11-58. The commissioner is authorized and empowered to investigate any claim for wages due an employee and in such investigation may summon the defendant, subpoena witnesses, administer oaths, take testimony and shall upon such [hearing] proceeding make a decision or award [where] when the sum in controversy, exclusive of costs, does not exceed [\$2,000.00] \$10,000.00.

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

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

¹The commissioner is authorized to supervise the payment of amounts due to employees under an award made pursuant to this section, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to 25% of any payment made to the commissioner pursuant to this section. The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1985, c.135, s.1)

~~REPLACE SECTION 5 TO READ:~~

5. Section 23 of P.L.1966, c.113 (C.34:11-56a22) is amended to read as follows:

23. Any employer who willfully hinders or delays the commissioner, the director or their authorized representatives in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner, the director or their authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner, the director or their authorized

representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or any wage order issued pursuant thereto, or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a [misdemeanor and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$500.00 or by imprisonment of not less than 10 nor more than 90 days or by both such fine and imprisonment] disorderly persons offense and shall, upon conviction for a first violation, be punished by a fine of not less than \$100 nor more than ¹[\$500] \$1,000¹ or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not ¹less than 10 nor¹ more than 100 days or by both the fine and imprisonment. Each week, in any day of which an employee is paid less than the rate applicable to him under this act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), when the Commissioner of Labor finds that an individual has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court. Any sum collected as a fine or penalty pursuant to this section or through a summary proceeding under P.L.1965, c.173 (C.34:11-4.1 et seq.) pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied toward ¹[the costs of the Department of Labor in enforcing the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.).] enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹ (cf: P.L.1966, c.113, s.23)

REPLACE SECTION 6 TO READ:

6. Section 19 of P.L.1940, c.153 (C.34:2-21.19) is amended to read as follows:

19. Whoever employs or permits or suffers any minor to be employed or to work in violation of this act, or of any order or ruling issued under the provisions of this act, or obstructs the Department of Labor, its officers or agents, or any other person authorized to inspect places of employment under this act, and whoever, having under his control or custody any minor, permits or suffers him to be employed or to work in violation of this act, shall be guilty of an offense. [Where] ¹[When] If ¹a defendant acts knowingly, an offense under this section shall be a crime of the fourth degree. Otherwise it shall be a disorderly persons offense ¹and the defendant shall, upon conviction for a violation, be punished by a fine of not less than \$100 nor more than \$1,000¹. Each day during which any violation of this act continues shall constitute a separate and distinct offense, and the employment of any minor in violation of the act shall with respect to each minor so employed, constitute a separate and distinct offense.

¹As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1940, c.153 (C.34:2-21.1 et seq.), when the Commissioner of Labor finds that an individual has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-¹ et seq.). Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section ⁸8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court. Any sum collected as a fine or penalty pursuant to this section or through a summary proceeding under P.L.1940, c.153³(C.34:2-21.1 et seq.) and pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied toward ¹[the costs of the Department of Labor in enforcing the provisions of P.L.1940, c.153 (C.34:2-21.1 et seq.)] enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1981, c.331, s.9)

INSERT

ADD NEW SECTIONS 7 THROUGH 26 TO READ:

17. R.S.34:7-3 is amended to read as follows:

34:7-3. Each application for examination for any license issued by the bureau shall be accompanied by fees as set forth in this section. ~~Such fees shall be made payable to the Commissioner of Labor.~~ There shall be no other charge for the initial examination or for one re-examination taken within 6 months of the original examination. Failure to appear for examination or to obtain a passing grade shall not entitle the applicant to a refund of any fee.

- Original application [\$15.00] ~~\$25~~
- Raise of grade or additional classification application ~~[\$10.00] \$20~~
- Additional examinations, in excess of 2, on any application ~~[\$7.50] \$10~~
- Annual license renewal if requested no later than expiration date [\$5.00] ~~\$10~~
- License renewal for 3 years if requested no later than expiration date [\$10.00] ~~\$20~~
- Application for renewal, if made not more than 3 years after expiration and if all penalties lawfully imposed upon the applicant by the Mechanical Inspection Bureau have been paid
 - 1 year [\$7.50] ~~\$15~~
 - 3 years [\$15.00] ~~\$30~~

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Handwritten notes:
"Destruction of Public Records Law (1953)"
P.L. 1953, c. 410
(C. 47:3-15.2)
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Upon failure to so renew a license for a period of 3 years and 1 day after expiration date all records pertaining to such license may be destroyed pursuant to the [Destruction of Public Records Law of 1953] and any application for renewal of the license will be treated as an original application for examination. All fees collected under this article shall be [paid by the commissioner into the State Treasury and shall become a part of the State General Fund] applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

Any license may be revoked or suspended by the commissioner upon receiving evidence of incompetence, negligence, intoxication while on duty or other reason establishing that the licensee is unfit to hold a license, after notice is given to the licensee and a hearing afforded him before one or more members of the examining board. In case revocation or suspension is recommended by the member or members conducting the hearing, it shall not be acted upon by the commissioner until at least 15 days' notice of the recommendation shall be given to the licensee and an opportunity afforded him within that time period to ask for a rehearing before the commissioner. After rehearing, if requested, the commissioner may affirm, modify or dismiss such recommendation. Pending a hearing or rehearing as provided in

this paragraph, the commissioner may authorize the suspension of a license in the interest of health and safety.¹

ok (cf: P.L.1982, c.54, s.1)

~~18. R.S.34:7-6 is amended to read as follows:~~

~~34:7-6. Any person who shall violate any of the provisions of this article shall be liable to a penalty of not less than [ten dollars (\$10.00)] \$50 nor more than [one hundred dollars (\$100.00)] \$500, to be collected by suit or compromise. An officer of a corporation violating any of the provisions of this article shall be personally liable for the violation by such corporation. Any manager, superintendent or other person in charge of any building or other places in which this article is violated shall be liable for such violation. Any sum collected as a penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹~~

ok (cf: P.L.1946, c.249, s.7)

19. R.S.34:7-15 is amended to read as follows:

34:7-15. a. For each internal and external inspection of vessels specified in subsection a. of R.S. 34:7-14, which shall include hydrostatic test if found necessary, the owner, lessee or operator of the vessel shall pay to the Department of Labor a fee of [\$15.00] \$25 for vessels having 10 and not over 60 square feet of heating surface, [\$20.00] \$35 for vessels over 60 and not over 1,000 square feet of heating surface and [\$35.00] \$50 for vessels over 1,000 square feet of heating surface; plus the actual travel expenses of the inspector.

b. For each inspection of vessels specified in subsection b. of R.S. 34:7-14, the owner, lessee or operator of the vessel shall pay to the Department of Labor the actual travel expenses of the inspector and a fee of \$5.00 for vessels not over 30 square feet size, \$10.00 for vessels over 30 but not over 60 square feet size, \$15.00 for vessels over 60 but not over 100 square feet size, \$20.00 for vessels over 100 square feet size. In determining size rating, the extreme diameter multiplied by the vessel length, or equivalent dimensions, shall be used.

c. The Division of Workplace Standards shall maintain an inspection service for the purpose of providing shop inspection of those vessels regulated by chapter 7 of Title 34, which are under construction or new, or which are to be used for a purpose other than that for which originally approved, or which have never been subject to a previous inspection in New Jersey. This service shall be provided for New Jersey builders, owners or users of such vessels upon their request only. The fees for this service, exclusive of the actual travel expenses of the inspector, which also shall be paid, shall be set by the commissioner and shall be: (1) not more than \$25.00 for each vessel inspected, provided that he may establish a charge for each visit, for the

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purpose of inspection, of not less than \$50.00 nor more than [\$150.00] \$300; (2) for construction review of vessel not designed in accordance with standards set by the Board of Boiler, Pressure Vessel and Refrigeration Rules; not less than [\$200.00] \$500 nor more than [\$500.00] \$1,500.¹

AK (cf: P.L. 1985, c. 109, s. 2)

¹10. R.S. 34:7-16 is amended to read as follows:

34:7-16. In addition to the annual internal and external inspection, there may be an external inspection if found necessary of each vessel specified in section 34:7-14a. of this Title which shall be made as nearly as may be at the expiration of 6 months from each annual inspection and for which the owner, lessee or operator shall pay to the inspector a fee of [\$15.00] \$25, in addition to the actual cost of travel incurred by the inspector in going to and returning from the place of inspection. Each vessel insured by an insurance company may also be given an external inspection by a certified inspector.¹

*subsection
a. of R.S.
34:7-14*

AK (cf: P.L. 1982, c. 54, s. 4)

¹11. R.S. 34:7-19 is amended to read as follows:

34:7-19. An insurance company making an inspection of any vessel specified in section 34:7-14 of this Title shall make a report of such inspection to the commissioner in such manner and at such intervals as he may by rules provide, and shall pay the commissioner a fee of not less than \$2.00 nor more than [\$5.00] \$10 as set by the commissioner, payable by and collected from the owner, lessee or operator by the insurer or inspector at the time of inspection for each boiler insured within the State. It is further provided that payment of these fees may be made by the insurer through other methods when required or allowed by the commissioner, as provided in section 34:7-18 of this Title.¹

R.S.

(cf: P.L. 1967, c. 211, s. 5)

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¹12. R.S. 34:7-25 is amended to read as follows:

34:7-25. All refrigeration systems using flammable or toxic refrigerants of over three tons of refrigerating capacity or requiring over six driving horsepower, and all refrigeration systems using nonflammable and nontoxic refrigerants of over 18 tons of refrigerating capacity or requiring over 36 driving horsepower, having relief devices set over 15 pounds per square inch gage and used in a plant of any size or storage capacity, shall be inspected annually by an inspector of the Mechanical Inspection Bureau or of an insurance company, as provided in section 34:7-14a. of this Title, and the owner, lessee or operator shall comply with the recommendations of the inspector in conformity with the rules and regulations adopted by the Board of Boiler, Pressure Vessel and Refrigeration Rules of the Mechanical Inspection Bureau and approved by the commissioner.

*subsection a.
of R.S. 34:7-14*

The fees for such inspection by an inspector of the Mechanical Inspection Bureau shall be as follows:

- a. Refrigeration systems of 25 tons and over, but less than 300 tons of refrigerating capacity, ~~the sum of [\$35.00] \$50 for each~~ inspection, plus the actual travel expense of the inspector;
- b. Refrigeration systems under 25 tons and over 3 tons of refrigerating capacity, ~~the sum of [\$20.00] \$35~~ for each inspection, plus the actual travel expense of the inspector;
- c. Refrigeration systems of 300 tons or over of refrigerating capacity, ~~the sum of [\$45.00] \$70~~ for each inspection, plus the actual travel expense of the inspector.

The fees and travel expenses shall be paid to the inspector, at the time of inspection, by the owner, lessee or operator of the refrigeration system.

The annual inspection and inspection reports of refrigeration systems by insurance companies licensed to do business within this State and otherwise complying with this chapter shall be accepted in lieu of other inspections. Each insurance company shall file with the commissioner a report of each inspection and shall pay to him a fee of ~~[\$7.50] \$10~~ for each annual refrigeration system inspection, to be collected by the insurer from the owner or lessee of the plant inspected. After the owner, lessee or operator has complied with the rules or regulations, a certificate shall be issued by the Mechanical Inspection Bureau, which certificate shall be valid for ~~1~~^{one} year and be the authority for the operation of the refrigeration system during such time. Upon expiration, the certificate shall be renewed by the Mechanical Inspection Bureau if the refrigeration system is found to be in proper condition for operation within the prescribed rules of the Mechanical Inspection Bureau. All fees collected under [this act] chapter 7 of Title 34 of the Revised Statutes shall be ~~[paid by the commissioner or his duly authorized representative into the State Treasury and shall become a part of the State General Fund]~~ applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: L.1982, c.54, s.5)

¹³ R.S. 34:7-26 is amended to read as follows:

34:7-26. Any owner, lessee, seller or operator of any steam or hot water boiler or similar equipment specified in R.S. 34:7-14, pressure vessel or refrigeration system who shall sell, use, cause or allow to be used such steam or hot water boiler or similar equipment specified in R.S. 34:7-14, pressure vessel or refrigeration system in violation of any provision of this article shall be liable to a penalty of not less than \$500.00 nor more than \$1,000.00 for each first offense and not less than \$500.00 nor more than \$2,500.00 for each subsequent offense, to be collected by a civil action or, in the commissioner's discretion, to be

imposed by the commissioner as a compromise. All civil actions shall be brought by the Department of Labor as plaintiff, and may be brought in the Special Civil Part, Law Division of the Superior Court of the county, or municipal court of the municipality, wherein such violation shall occur. Any sum collected as a penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf. P.L. 1987, c. 336, s. 2)

114. Section 16 of P.L. 1941, c. 308 (C.34:6-136.16) is amended to read as follows:

16. (a) The commissioner shall enforce and administer the provisions of this act and the commissioner is directed to make all inspections and investigations necessary for proper enforcement and administration thereof.

(b) In the administration of this act the commissioner shall have the power to administer oaths, take affidavits and the depositions of witnesses and issue subpoenas for and compel the attendance of witnesses and the production of papers, books, accounts, payrolls, documents, records, testimony and other evidence of whatever description. In the case of failure of any person to comply with any order of the commissioner or subpoena, lawfully issued; or on the refusal of any witness to produce evidence or to testify as to any matter regarding which he may be lawfully interrogated, it shall be the duty of [any District Court or County Court] or the judge thereof, upon application by the commissioner to compel obedience by proceedings for contempt, as in the case of disobedience of a subpoena issued for such court or a refusal to testify therein.

(c) Notwithstanding the provisions of any other general, local or special law, all fees and other moneys derived from the operation of this act shall be [remitted to the State Treasurer and by him deposited in the General State Fund and the cost of administration of this act shall be included in the annual appropriation law] applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf. P.L. 1950, c. 42, s. 1)

115. Section 19 of P.L. 1941, c. 308 (C.34:6-136.19) is amended to read as follows:

19. Any employer or person who: (1) Directly or indirectly in any way, distributes, delivers or causes to be distributed or delivered, or sells or causes to be sold, articles or materials for industrial home work in violation of any provision of this act or of any rule, regulation or order issued thereunder; or (2) Violates or fails to comply with any provision of this act or any rule, regulation or order issued thereunder; or (3) Does not possess a valid employer's permit issued by the commissioner pursuant to section 7 of this act or fails to comply with any provision or

Enforcement,
administration,
oaths, affidavits,
subpoenas,
witnesses.

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of the
Superior Court

Penalties.

condition of that permit; or (4) Refuses to allow the commissioner or his authorized representative to enter his place of business or other place for the purpose of investigating in the enforcement of this act, and of inspecting any records required to be kept by section 10 of this act; or (5) Willfully makes a false statement or representation in order to lower the amount of fees due from him under this act; or (6) Makes any deduction from the wages or salary of a home worker in order to pay any portion of a payment which the employer or person is required to make by this act; shall be guilty of a disorderly persons offense and, upon conviction for a violation, shall be punished by a fine of not less than \$100 nor more than \$1,000. If an employer or person knowingly violates this act or if an employer or person commits a second violation or multiple violation of this act, that employer or person shall be guilty of a crime of the fourth degree. Each day a violation is continued and each home worker engaged in industrial home work directly or indirectly for or in behalf of the employer or person in violation of any provision of this act or any rule, regulation or order issued thereunder shall be considered a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of this act, when the Commissioner of Labor finds that an employer has violated this act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410^h (C.52:14B-1 et seq.). Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court. Any sum collected as a fine or penalty pursuant to this section or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied toward enforcement and administration costs of the Division of Workplace Standards^h in the Department of Labor.¹

^h(cf: P.L.1989, c.161, s.1)

^h16. Section 7 of P.L.1960, c.55 (C.21:1A-134) is amended to read as follows:

7. Upon receipt of an application for a permit to manufacture, store, sell, transport or use explosives, and before the permit is issued, the commissioner shall make or cause to be made an

investigation for the purpose of ascertaining if all applicable requirements of this act have been met. The commissioner shall not issue a permit to manufacture, sell, store, transport or use explosives unless all the requirements of this act have been met. All permits issued in accordance with the provisions of this act shall be subject to any amendments hereafter made to this act.

✓ A. An applicant for a permit shall, at his own expense, furnish whatever pertinent information the commissioner may require in addition to that specified herein. Application forms shall be furnished by the Department of Labor ~~and Industry~~.

B. An applicant for a permit to manufacture, sell, transport, store or use explosives must:

- (a) be at least 21 years of age;
- (b) have a reasonable understanding of the English language;
- (c) present satisfactory evidence of experience in the manufacture, sale, transportation, storage or use of explosives;
- (d) demonstrate by written, oral or field examination, as the commissioner may direct, adequate knowledge of the safe manufacture, sale, transportation, storage or use of explosives and of the provisions of this act; and

(e) be of good moral character and must never have been disloyal to the United States; and

it shall be within the sole discretion of the commissioner to determine whether an applicant who has been convicted of a crime involving moral turpitude has the good moral character necessary for a permit. It shall also be within the reasonable discretion of the commissioner to deny the issuance of a permit where he concludes, after a full examination of the qualifications of an applicant, that to grant a permit would be dangerous to the health, safety and welfare of the people of the State of New Jersey. The failure of a holder of a permit to maintain the qualifications stated herein shall be good cause for the revocation of the permit.

C. When the applicant for a permit to manufacture, sell, transport, store or use explosives is a firm, association or corporation, the applicant must demonstrate that such activities with regard to explosives will be under the direct supervision of a person who meets the qualifications stated above.

✓ D. Permits shall be valid for ~~one~~ ^{one} year unless sooner revoked. Permits which expire on July 1, 1960 may be renewed by the commissioner at his discretion for a period of not less than ~~3~~ ^{three} months nor more than 15 months, and permits renewed after such a period shall thereafter be valid for ~~one~~ ^{one} year unless sooner revoked. The fee for all permits shall be fixed by the commissioner on a yearly basis or, for periods of less than a year, in amounts proportionately less than the annual fee.

E. The application for any permit must be accompanied by a fee established by regulation in accordance with the following schedule:

(a) ~~To manufacture--not less than [\$50.00] \$200 nor more than [\$500.00] \$1,000;~~

(b) To sell--not less than \$25.00 nor more that [\$200.00] \$300;

(c) [To transport-- \$20.00] (deleted by amendment, P.L. .

~~c. (now pending before the Legislature as this bill):~~

(d) To store--not less than \$25.00 nor more than \$150.00; but if the explosives are in excess of 30,000 pounds, then the fee shall be not less than \$150.00 nor more than [\$300.00] \$750;

(e) To use--not more than [\$100.00] \$200;

(f) For storage, transportation, and use of smokeless powder in amounts in excess of 36 pounds, but not in excess of 100 pounds and black powder in amounts in excess of 5 pounds but not in excess of 100 pounds which is used by private persons for the hand loading of small arms ammunition and which is not for resale--not less than \$2.00 nor more than \$10.00; where any such smokeless and black powder is in excess of 100 pounds, the fee shall be increased \$10.00 for each additional 100- pounds, or fraction thereof.

All fees derived from the operation of this act shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

h (cf: P.L.1971, c.154, s.4)

¹17. Section 13 of P.L.1960, c.55 (C.21:1A-140) is amended to read as follows:

13. It shall be unlawful for any person, partnership, firm, association or corporation, and any officer, agent or employee thereof, to violate or proximately contribute to the violation of any of the provisions of this act or of the regulations made hereunder. The violation of this act by an employee, acting within the scope of his authority, of any person, partnership, firm, association, or corporation shall be deemed also to be the violation of such person, partnership, firm, association or corporation. Violations of the provisions of this act or rules and regulations made hereunder shall be punishable for the first offense by a penalty of not less than [\$25.00] \$100 nor more than [\$500.00] \$5,000, for the second offense by a penalty of not less than [\$150.00] \$300 nor more than [\$500.00] \$5,000 and for the third and each succeeding offense by a penalty of not less than [\$250.00] \$500 nor more than [\$1,000.00] \$10,000. The penalties shall be collected by a civil action in the name of the commissioner, to be instituted in the [county district court] of the county, or in municipal court of the municipality, where the offense was committed. Where the violation consists of a refusal to obey an order of the commissioner made under this act, each day during which the violation continues shall constitute

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Party
Law Division
The Superior
Court*

a separate and distinct offense except during the time an appeal from said order may be taken or is pending.

Any sum collected as a penalty pursuant to this section or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

✓ A. The Commissioner of Labor ~~and Industry~~ in his discretion, is hereby authorized and empowered to compromise and settle any claim for a penalty under this section for an amount that appears appropriate and equitable under all of the circumstances.

B. Permits to sell, transport, store or use explosives are revocable for cause by the commissioner. In any case where the commissioner revokes a permit, he shall notify the permittee of the revocation and shall provide, upon written request, for a hearing within 10 days of the date of the revocation. Within 30 days from the termination of the hearing, the commissioner shall issue an order approving, disapproving or modifying the revocation. Permits to manufacture are exempt from revocation, but the holders of such permits shall be subject in every other respect to the provisions of this act and the rules and regulations promulgated hereunder.

C. The requirements of this act concerning the distances of explosives manufacturing buildings and magazines from each other shall not be construed to apply to permanent buildings or magazines that exist at the time that this act becomes effective and which buildings and magazines have been used under authority of the laws formerly governing the manufacture and storage of explosives. This provision designating such explosives manufacturing buildings and magazines already existing at the effective date of this act as nonconforming uses shall not apply to any explosives manufacturing buildings or magazines constructed subsequent to the passage of this act nor to extensions or additions to such buildings and magazines that are made subsequent to the passage of this act.¹

(cf: P.L.1960, c.55, s.13)

^{at} 118. Section 11 of P.L.1963, c.150, (C.34:11-56.35) is amended ^{rk} to read as follows:

11. Any employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall

be guilty of a [misdemeanor] disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than ~~[\$500.00]~~ \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a [workman] is paid less than the rate applicable to him under this act and each [workman] so paid, shall constitute a separate offense. worker

As an alternative to or in addition to any other sanctions provided by law for violations of this act, when the Commissioner of Labor finds that an employer has violated this act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court. Any sum collected as a fine or penalty pursuant to this section or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹ worker

(cf: P.L.1963, c.150, s.11)

19. Section 12 of P.L.1963, c.150 (C.34:11-56.36) is amended to read as follows:

12. As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act, the commissioner is authorized to supervise the payment of amounts due to [workmen] workers under this act, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the [workmen] workers, and paid on order of the commissioner directly to the [workman] worker or [workmen] workers affected. The employer shall also pay the commissioner an administrative fee equal to 25% of any payment made to the commissioner pursuant to of this section. The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1963, c.150, s.12)

20. Section 15 of P.L.1963, c.150 (C.34:11-56.39) is amended to read as follows:

15. Any employer who discharges or in any other manner discriminates against any [workman] worker because [such workman] the worker has made any complaint to his employer, to the public body or to the commissioner that he has not been paid wages in accordance with the provisions of this act, or because [such workman] the worker has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because [such workman] the worker has testified or is about to testify in any such proceeding shall be guilty of a [misdemeanor] ~~disorderly persons offense~~ and shall, upon conviction therefor, be fined not less than ~~[\$50.00]~~ \$100 nor more than ~~[\$200.00]~~ \$1,000.

As an alternative to or in addition to any other sanctions provided by law for violations of this act, when the Commissioner of Labor finds that an employer has violated this act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court. Any sum collected as a fine or penalty pursuant to this section or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

~~th~~ (cf: P.L.1963, c.150, s.15)

✓ 121. Section 24 of P.L.1966, c.113~~6~~ (C.34:11-56a23) is amended to read as follows:

24. As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act or of any rule or regulations duly issued hereunder, the Commissioner of Labor [and Industry] is authorized to supervise the payment of amounts due to employees under this act, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employee, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to 25% of any payment made to the commissioner pursuant to this section. The fee shall

be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

sk (cf: P.L.1966, c.113, s.24)

✓ ¹²² Section 25 of P.L.1966, c.113 ^{sk} (C.34:11-56a24) is amended to read as follows:

25. Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the commissioner, the director or to their authorized representatives that he has not been paid wages in accordance with the provisions of this act, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because such employee has testified or is about to testify in any such proceeding, or because such employee has served or is about to serve on a wage board, shall be guilty of a [misdemeanor] disorderly persons offense and shall, upon conviction therefor, be fined not less than [\$50.00] \$100 nor more than [\$200.00] \$1,000. Such employer shall be required, as a condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action, under penalty of contempt proceedings for failure to comply with such requirement.

As an alternative to or in addition to any other sanctions provided by law for violations of this act, when the Commissioner of Labor finds that an employer has violated this act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court. Any sum collected as a fine or penalty pursuant to this section or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

M (cf: P.L.1966, c.113, s.25)

✓ 23. Section 6 of P.L.1966, c.261^{sl} (C.34:6-47.7a) is amended to read as follows:

~~7. Any person violating any of the provisions of P.L. 1948, c. 249 (C. 34:6-47.1 et seq.) shall be liable to a penalty of not less than \$500.00 nor more than \$5,000.00 to be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Any violation of P.L. 1948, c. 249 (C. 34:6-47.1 et seq.) by an officer, agent or employee shall also be a violation of P.L. 1948, c. 249 (C. 34:6-47.1 et seq.) by his employer if such employer had knowledge of and actual control over the cause of such violation. Where the violation is of a continuing nature each day during which it continues, shall constitute an additional, separate and distinct offense. Any sum collected as a fine or penalty pursuant to this section or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.~~

The commissioner is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the commissioner as may appear appropriate and equitable under all of the circumstances.¹

~~sl~~ (cf: P.L.1987, c.124, s.3)

✓ 124. Section 6 of P.L.1971, c.192^C (34:8A-12) is amended to read as follows:

6. Any person who violates any of the provisions of this act or of the rules and regulations promulgated hereunder shall be a disorderly person and upon conviction, for each violation, shall be punished by a fine of not less than ~~[\$50.00]~~ \$100 and not more than ~~[\$500.00]~~ \$1,000, or imprisonment for not more than 30 days, or both. Any sum collected as a fine pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

~~sl~~ (cf: P.L.1971, c.192, s.6)

✓ 125. Section 8 of P.L.1971, c.192^C (34:8A-14) is amended to read as follows:

8. ~~In addition to any other sanctions herein or otherwise provided by law, the commissioner, upon notice and hearing, may impose a penalty not exceeding \$500.00 for any violation of this act or of any rule or regulation duly issued hereunder. Such penalty shall be used for, and recovered by and in the name of the commissioner in a civil action by a summary proceeding under [the Penalty Enforcement Law] (N.J.S. 2A:58-1). Where any violation of this act or of any rule or regulation duly issued hereunder is of a continuing nature, each day during which such violation continues after the date fixed by the commissioner in any order or notice for the correction or termination of such violation, shall~~

"the penalty enforcement law"

~~constitute an additional separate and distinct offense, except during the time an appeal from said order or notice may be taken or is pending. It shall be a complete defense to any action for a penalty pursuant to this section for the defendant to prove that the violation complained of is solely the result of the willful destruction by the occupants of any camp; provided, that proof of such fact shall not alter any duty to correct or terminate said violation as ordered by the commissioner. Any sum collected as a penalty through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹~~

(cf: P.L.1971, c.192, s.8)

✓ 126. Section 9 of P.L.1975, c.105⁴ (5:3-39) is amended to read as follows:

9. The department shall determine a schedule of inspection and permit fees. The department shall, from time to time, make [such] further [recommendations to the Legislature as would allow fee requirements to be] adjustments in the schedule to bring it, as nearly as practicable and within the limits of reasonableness, [brought] into line with the costs of implementing the provisions of this act. The fees shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1975, c.105, s.9)

RENUMBER SECTION 7 AS SECTION 27

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 3061

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 15, 1990

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Assembly, No. 3061 (1R).

This bill revises various penalty and enforcement provisions of the State's labor laws and several other laws within the enforcement jurisdiction of the Department of Labor.

This bill increases the authority of the Department of Labor to take action against employers who do not provide employees with lawful compensation as required by P.L.1965, c.173 (C.34:11-4.1 et seq.) by: (1) removing from that law a provision requiring the Department of Labor to prove that a corporate officer or manager had knowledge of the existence of a violation before he can be deemed to be an employer and charged with violating that law; (2) changing the penalty for a failure to provide lawful compensation from a fine of not less than \$100 nor more than \$500 for each violation (misdemeanor) to a fine of not less than \$100 nor more than \$1,000 for a violation (disorderly persons offense) (each day during which the violation continues would be a separate and distinct offense); (3) authorizing the Commissioner of Labor to impose and collect administrative penalties, up to a maximum of \$250 for a first violation and up to \$500 for any subsequent violation, as an alternative or in addition to any other fine or penalty imposed under that law; and (4) empowering the commissioner to investigate and decide any claim for wages due an employee whenever the sum in controversy does not exceed \$10,000 (currently, the amount is \$2,000).

The bill also revises the penalty and enforcement provisions of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), to: (1) change the current penalty in that law of not less than \$100 nor more than \$500 for each violation or imprisonment of not less than 10 nor more than 90 days, or both, to a fine of not less than \$100 nor more than \$1,000 for a violation or imprisonment for not more than 100 days or both (disorderly persons offense); and (2) authorize the Commissioner of labor to impose administrative penalties of up to \$250 for a first violation and up to \$500 for any subsequent violation of the "New Jersey State Wage and Hour Law," as an alternative or in addition to any other fine or penalty imposed under that act.

The bill further modifies the penalty and enforcement provisions of the child labor law, P.L.1940, c.153 (C.34:2-21.1 et seq.), by

providing that, upon conviction for a violation of the provisions of that law, in cases where the violation was not a knowing violation, the employer is to be liable for a fine of not less than \$100 nor more than \$1,000. In addition, the bill authorizes the commissioner to impose and collect administrative penalties, up to a maximum of \$250 for a first violation and up to \$500 for each subsequent violation, as an alternative or in addition to any other fine or penalty imposed under that law.

The bill modifies the penalty and enforcement provisions of the law governing the payment of the prevailing wage on public works, P.L.1963, c.150 (C.34:11-56.25 et seq.), by changing the applicable penalty provisions for violations from a misdemeanor subject to a fine of not less than \$100 or more than \$500 or to a disorderly persons offense subject to a fine of not less than \$100 nor more than \$1000. In addition, the bill permits the imposition of alternate or additional administrative penalties of up to \$250 for first violations and up to \$500 for each subsequent violation. The bill provides similar fines and penalties for violations of "the home work law," R.S.34:6-120 et seq., as well as similar fines for violation of the law governing agricultural crew leaders, P.L.1971, c.192 (C.34:8A-7 et seq.).

The administrative penalties authorized by the bill are to be imposed in accordance with a schedule of penalties to be adopted by rule or regulation of the commissioner pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and are required to be used exclusively for the funding of enforcement and administration costs of the Division of Workplace Standards. As amended by the committee, the bill provides that no administrative penalty may be levied unless the commissioner provides the alleged violator with notification of the violation and the amount of the penalty by certified mail. The alleged violator will have 15 days from receipt of the notice to request a hearing before the commissioner or his designee. If a hearing is requested, the commissioner is to issue a final order that a violation has occurred after the hearing, if no hearing is requested the notice shall become the final order upon expiration of the 15-day period. Penalties imposed may be recovered, with costs, in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.

The bill makes several additional changes to the State's labor laws as well as certain laws subject to regulation and enforcement by the Department of Labor. Among these changes, the bill: provides increases in the civil penalties (to a maximum of \$5,000 for a first or second offense and \$10,000 for a subsequent offense) for violations of standards regarding explosives; requires employers to pay a 25% administrative charge in connection with the collection by the department of wages owed to their employees because of employer violations of wage payment, minimum wage or prevailing wage standards; increases licensing and inspection fees for explosives and for boiler and refrigeration systems and their operators; and

dedicates revenues raised from fees, penalties and fines under all of the above-indicated laws, as well as the laws regarding amusement ride and high voltage line safety, to fund enforcement and administration costs of the Division of Workplace Standards.

The committee amended the bill to reinsert the requirement that an employer act in a knowing and willful manner to be subject to punishment for a disorderly persons offense for the violation of any provision of the law governing the payment of lawful compensation, P.L.1965, c.173 (C.34:11-4.1 et seq.). In addition, the committee made several technical changes to the enforcement procedures for the collection of administrative penalties provided by the bill.

SENATE SLI COMMITTEE

AMENDMENTS

to

ASSEMBLY, No. 3061(1R)

(Sponsored by Assemblymen FOY and PATERO)

**ADOPTED
OCT 15 1990**

REPLACE SECTION 3 TO READ:

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

10. Any employer who [knowingly and willfully] ²knowingly and willfully² violates any [provisions] provision of ²[this act] P.L. 1965, c. 173 (34:11-4.1 et seq.)² shall be guilty of a [misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100.00 nor more than \$500.00 for violations thereof] disorderly persons offense and, upon conviction for a ¹[first]¹ violation, shall be punished by a fine of not less than \$100 nor more than ¹[\$250 and, upon conviction for any subsequent violation, be punished by a fine of not more than \$500] \$1,000¹. Each day during which any violation of this act continues shall constitute a separate and distinct offense.

Remain unchanged from 3.

As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.), when the Commissioner of Labor finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties; up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.] No administrative penalty shall

be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section ²[or through a summary proceeding under P.L.1965, c.173 (C.34:11-4.1 et seq.) pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward ¹[the costs of the Department of Labor in enforcing the provisions of P.L.1965, c.173 (C.34:11-4.1 et seq.);] enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1965, c.173, s.10)

REPLACE SECTION 5 TO READ:

5. Section 23 of P.L.1966, c.113 (C.34:11-56a22) is amended to read as follows:

23. Any employer who willfully hinders or delays the commissioner, the director or their authorized representatives in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner, the director or their authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner, the director or their authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or any wage order issued pursuant thereto, or otherwise violates any provision of this act or of any regulation or order issued under this act shall

~~be guilty of a [misdemeanor and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$500.00 or by imprisonment of not less than 10 nor more than 90 days or by both such fine and imprisonment] disorderly persons offense and shall, upon conviction for a first violation, be punished by a fine of not less than \$100 nor more than ¹[\$500] \$1,000¹ or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not ¹less than 10 nor¹ more than 100 days or by both the fine and imprisonment.~~ Each week, in any day of which an employee is paid less than the rate applicable to him under this act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), when the Commissioner of Labor finds that an individual has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.] No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the

notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section²[or through a summary proceeding under P.L.1965, c.173 (C.34:11-4.1 et seq.) pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward¹[the costs of the Department of Labor in enforcing the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.)] enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1966, c.113, s.23)

REPLACE SECTION 6 TO READ:

6. Section 19 of P.L.1940, c.153 (C.34:2-21.19) is amended to read as follows:

19. Whoever employs or permits or suffers any minor to be employed or to work in violation of this act, or of any order or ruling issued under the provisions of this act, or obstructs the Department of Labor, its officers or agents, or any other person authorized to inspect places of employment under this act, and whoever, having under his control or custody any minor, permits or suffers him to be employed or to work in violation of this act, shall be guilty of an offense. [Where] ¹[When] If¹ a defendant acts knowingly, an offense under this section shall be a crime of the fourth degree. ~~Otherwise it shall be a disorderly persons offense¹ and the defendant shall, upon conviction for a violation, be punished by a fine of not less than \$100 nor more than \$1,000¹.~~ Each day during which any violation of this act continues shall constitute a separate and distinct offense, and the employment of any minor in violation of the act shall with respect to each minor so employed, constitute a separate and distinct offense.

As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1940, c.153 (C.34:2-21.1 et seq.), when the Commissioner of Labor finds that an individual has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.] No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section ²[or through a summary proceeding under P.L.1940, c.153 (C.34:2-21.1 et seq.) and pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward ¹[the costs of the Department of Labor in enforcing the provisions of P.L.1940, c.153 (C.34:2-21.1 et seq.)] enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1981, c.331, s.9)

REPLACE SECTION 15 TO READ:

¹15. Section 19 of P.L.1941, c.308 (C.34:6-136,19) is amended to read as follows:

19. Penalties. Any employer or person who: (1) Directly or indirectly in any way, distributes, delivers or causes to be distributed or delivered, or sells or causes to be sold, articles or materials for industrial home work in violation of any provision of this act or of any rule, regulation or order issued thereunder; or ~~(2) Violates or fails to comply with any provision of this act or~~ any rule, regulation or order issued thereunder; or (3) Does not possess a valid employer's permit issued by the commissioner pursuant to section 7 of this act or fails to comply with any provision or condition of that permit; or (4) Refuses to allow the commissioner or his authorized representative to enter his place of business or other place for the purpose of investigating in the enforcement of this act, and of inspecting any records required to be kept by section 10 of this act; or (5) Willfully makes a false statement or representation in order to lower the amount of fees due from him under this act; or (6) Makes any deduction from the wages or salary of a home worker in order to pay any portion of a payment which the employer or person is required to make by this act; shall be guilty of a disorderly persons offense and, upon conviction for a violation, shall be punished by a fine of not less than \$100 nor more than \$1,000. If an employer or person knowingly violates this act or if an employer or person commits a second violation or multiple violation of this act, that employer or person shall be guilty of a crime of the fourth degree. Each day a violation is continued and each home worker engaged in industrial home work directly or indirectly for or in behalf of the employer or person in violation of any provision of this act or any rule, regulation or order issued thereunder shall be considered a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of ²[this act,] any provision of Article 12 of chapter 6 of Title 34 of the Revised Statutes² when the Commissioner of Labor finds that an employer has violated ²[this act] that article², the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each

subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.] No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq. ² Any sum collected as a fine or penalty pursuant to this section ²[or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,] ² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor. ¹

(cf: P.L.1989, c.161, s.1)

REPLACE SECTION 17 TO READ:

¹17. Section 13 of P.L.1960, c.55 (C.21:1A-140) is amended to read as follows:

13. It shall be unlawful for any person, partnership, firm, association or corporation, and any officer, agent or employee thereof, to violate or proximately contribute to the violation of any of the provisions of this act or of the regulations made

hereunder. The violation of this act by an employee, acting within the scope of his authority, of any person, partnership, firm, association, or corporation shall be deemed also to be the violation of such person, partnership, firm, association or corporation. Violations of the provisions of this act or rules and regulations made hereunder shall be punishable for the first offense by a penalty of not less than [~~\$25.00~~] \$100 nor more than [~~\$500.00~~] \$5,000, for the second offense by a penalty of not less than [~~\$150.00~~] \$300 nor more than [~~\$500.00~~] \$5,000 and for the third and each succeeding offense by a penalty of not less than [~~\$250.00~~] \$500 nor more than [~~\$1,000.00~~] \$10,000. The penalties shall be collected by a civil action in the name of the commissioner, to be instituted in the [county district court] Special Civil Part, Law Division, of the Superior Court of the county, or in municipal court of the municipality, where the offense was committed. Where the violation consists of a refusal to obey an order of the commissioner made under this act, each day during which the violation continues shall constitute a separate and distinct offense except during the time an appeal from said order may be taken or is pending.

Any sum collected as a penalty pursuant to this section ²[for through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

A. The Commissioner of Labor [and Industry], in his discretion, is hereby authorized and empowered to compromise and settle any claim for a penalty under this section for an amount that appears appropriate and equitable under all of the circumstances.

B. Permits to sell, transport, store or use explosives are revocable for cause by the commissioner. In any case where the commissioner revokes a permit, he shall notify the permittee of the revocation and shall provide, upon written request, for a hearing within 10 days of the date of the revocation. Within 30 days from the termination of the hearing, the commissioner shall issue an order approving, disapproving or modifying the revocation. Permits to manufacture are exempt from revocation, but the holders of such permits shall be subject in every other respect to the provisions of this act and the rules and regulations promulgated hereunder.

C. The requirements of this act concerning the distances of explosives manufacturing buildings and magazines from each other shall not be construed to apply to permanent buildings or magazines that exist at the time that this act becomes effective and which buildings and magazines have been used under authority of the laws formerly governing the manufacture and storage of explosives. This provision designating such explosives manufacturing buildings and magazines already existing at the ~~effective date of this act as nonconforming uses shall not apply~~ to any explosives manufacturing buildings or magazines constructed subsequent to the passage of this act nor to extensions or additions to such buildings and magazines that are made subsequent to the passage of this act.¹

(cf: P.L.1960, c.55, s.13)

REPLACE SECTION 18 TO READ:

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

11. Any employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a [misdemeanor] disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than ~~[\$500.00]~~ \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a [workman] worker is paid less than the rate applicable to him under this act and each [workman] worker so paid, shall constitute a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of ²[this act] any provision of P.L. 1963, c. 150 (C. 34:11-56.25 et seq.)², when the Commissioner of

Labor finds that an employer has violated ²[this] that² act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.] No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section ²[or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1963, c.150, s.11)

REPLACE SECTION 20 TO READ:

¹20. Section 15 of P.L.1963, c.150 (C.34:11-56.39) is amended to read as follows:

15. Any employer who discharges or in any other manner discriminates against any [workman] worker because [such workman] the worker has made any complaint to his employer, to the public body or to the commissioner that he has not been paid wages in accordance with the provisions of this act, or because [such workman] the worker has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because [such workman] the worker has testified or is about to testify in any such proceeding shall be guilty of a ~~[misdemeanor] disorderly persons offense~~ and shall, upon conviction therefor, be fined not less than [\$50.00] \$100 nor more than [\$200.00] \$1,000.

As an alternative to or in addition to any other sanctions provided by law for violations of ²[this act] any provision of P.L. 1963, c. 150 (C. 34:11-56.25 et seq.)², when the Commissioner of Labor finds that an employer has violated ²[this] that² act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.] No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested,

the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section ²[or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1963, c.150, s.15)

REPLACE SECTION 22 TO READ:

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

25. Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the commissioner, the director or to their authorized representatives that he has not been paid wages in accordance with the provisions of this act, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because such employee has testified or is about to testify in any such proceeding, or because such employee has served or is about to serve on a wage board, shall be guilty of a [misdemeanor] disorderly persons offense and shall, upon conviction therefor, be fined not less than ~~[\$50.00]~~ \$100 nor more than ~~[\$200.00]~~ \$1,000. Such employer shall be required, as a condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action, under penalty of contempt proceedings for failure to comply with such requirement.

As an alternative to or in addition to any other sanctions provided by law for violations of ²[this act] P.L. 1966, c. 113 (C. 34:11-56a et seq.)², when the Commissioner of Labor finds that an employer has violated ²[this] that² act, the commissioner is authorized to assess and collect administrative penalties,

up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.] No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq. ² Any sum collected as a fine or penalty pursuant to this section ²[or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,] ² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor. ¹

(cf: P.L.1966, c.113, s.25)

REPLACE SECTION 23 TO READ:

¹23. Section 6 of P.L.1966, c.261 (C.34:6-47.7a) is amended to read as follows:

7. Any person violating any of the provisions of P.L.1948, c.249 (C.34:6-47.1 et seq.) shall be liable to a penalty of not less than \$500.00 nor more than \$5,000.00 to be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any violation of P.L.1948, c.249 (C.34:6-47.1 et seq.) by an officer, agent or employee shall also be a violation of P.L.1948, c.249 (C.34:6-47.1 et seq.) by his employer if such employer had knowledge of and actual control over the cause of such violation. Where the violation is of a continuing nature each day during which it continues, shall constitute an additional, separate and distinct offense. Any sum collected as a fine or penalty pursuant to this section ²[or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

The commissioner is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the commissioner as may appear appropriate and equitable under all of the circumstances.¹
(cf: P.L.1987, c.124, s.3)

REPLACE SECTION 25 TO READ:

¹25. Section 8 of P.L.1971, c.192 (C.34:8A-14) is amended to read as follows:

8. In addition to any other sanctions herein or otherwise provided by law, the commissioner, upon notice and hearing, may impose a penalty not exceeding \$500.00 for any violation of this act or of any rule or regulation duly issued hereunder. Such penalty shall be used for, and recovered by and in the name of the commissioner in a civil action by a summary proceeding under [the Penalty Enforcement Law] "the penalty enforcement law" (N.J.S.2A:58-1). Where any violation of this act or of any rule or regulation duly issued hereunder is of a continuing nature, each day during which such violation continues after the date fixed by the commissioner in any order or notice for the correction or termination of such violation, shall constitute an additional separate and distinct offense, except during the time an appeal

from said order or notice may be taken or is pending. It shall be a complete defense to any action for a penalty pursuant to this section for the defendant to prove that the violation complained of is solely the result of the willful destruction by the occupants of any camp; provided, that proof of such fact shall not alter any duty to correct or terminate said violation as ordered by the commissioner. Any sum collected as a penalty ²[through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.] pursuant to this section² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1971, c.192, s.8)

LEGISLATIVE FISCAL ESTIMATE TO

[SECOND REPRINT]

ASSEMBLY, No. 3061

STATE OF NEW JERSEY

DATED: November 5, 1990

Assembly Bill No. 3061 (2R) of 1990 would increase the authority of the Department of Labor to take action against employers who do not provide employees with lawful compensation as required by P.L.1965, c.173 (C.34:11-4.1 et seq.) by revising various administrative and civil penalties which may be levied upon an employer found guilty of violating certain provisions of the State's labor and child labor laws. The bill would also strengthen the enforcement powers of the Commissioner of Labor. Monies collected in the form of penalties and fines are to be used exclusively to fund enforcement and administrative costs of the Division of Workplace Standards within the Department of Labor.

The bill would increase fees and penalties in engineer and firemen licensing, boiler inspections, amusement rides and explosives. The Department of Labor has estimated that the increased fees and penalties concerning the boiler inspections would generate approximately \$380,000 in additional revenues. The department did not provide estimates concerning the fees and penalties of the other areas listed above. The bill would also increase penalties for a number of wage and hour laws, as well as providing for an assessment against employers on the amount collected in back wages for employees. The department has estimated that these provisions would generate approximately \$1,500,000. Thus, according to the department, the additional revenue that would be collected as a result of the provisions of this bill would be approximately \$1,880,000. As stated above, these moneys would be used by the Division of Workplace Standards.

The Office of Legislative Services (OLS) concurs with the Department of Labor's estimates concerning the increased revenues that will be generated from the boiler inspections. The department's estimate of approximately \$380,000 in increased revenue appears to be a reasonable one. The OLS estimates that the increased licensing and inspection fees for explosives would increase revenues by at least \$20,000 in the first full year of implementation. The OLS does not concur with the department's estimates concerning the additional revenue that would be generated from the revised penalties for wage and hour law violations. The department's figure of \$1,500,000 in additional revenues appears to be significantly underestimated. Concerning these additional administrative fines and increased civil penalties, the OLS notes that Department of Labor estimates on the provisions of Assembly Bill No. 2422 (2R) of 1988, which would have increased certain labor law fines and penalties, listed increased revenues of approximately \$938,000 in the first full year of implementation. That bill would have increased civil penalties and authorized the Department of

Labor to collect administrative fines for violations of the wage payment and wage and hour standards and child labor standards in the State. All of the penalty and fine increases proposed by A-2422 (2R) of 1988 are proposed in A-3061 (2R) of 1990 as well. The OLS also notes that A-3061 (2R) would require employers to pay a 25 percent administrative charge in connection with the collection by the department of wages owed to their employees because of employer violations of wage payment, minimum wage or prevailing wage standards. ~~The OLS estimates that this provision would generate at least \$916,000 in additional revenues. Thus, the OLS estimates that the provisions of this bill would result in at least \$2,254,000 in additional revenues in the first full year of implementation.~~

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

SENATE AMENDMENTS
(Proposed by Senator Foy)

to

ASSEMBLY, No. 3061(2R)

(Sponsored by Assemblyman Foy)

ADOPTED

JUN 20 1991

REPLACE SECTION 2 TO READ:

2. Section 9 of P.L.1965, c.173 (C.34:11-4.9) is amended to read as follows:

9. a. The commissioner shall enforce and administer the provisions of this act and the commissioner or his authorized representatives are empowered [to hold hearings and otherwise] to investigate charges of violations of this act [and to institute actions for penalties hereunder].

b. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

c. The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before [said] the commissioner.

d. [In case of failure of any] If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the [County] Superior Court, on application by the commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(2 thru 15)

¹e. The commissioner is authorized to supervise the payment of amounts due to employees pursuant to Article 1 of chapter 11 of Title 34 of the Revised Statutes, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to ³not less than 10% or more than ³ 25% of any payment made to the commissioner pursuant to this section. ³The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).³ The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: ~~P.L.1965, c.173, s.9~~ P.L. 1991, c.91, s. 353)
REPLACE SECTION 3 TO READ:

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

10. Any employer who [knowingly and willfully] ²knowingly and willfully² violates any [provisions] provision of ²[this act] P.L.1965, c.173 (34:11-4.1 et seq.)² shall be guilty of a [misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100.00 nor more than \$500.00 for violations thereof] disorderly persons offense and, upon conviction for a ¹[first]¹ violation, shall be punished by a fine of not less than \$100 nor more than ¹[\$250 and, upon conviction for any subsequent violation, be punished by a fine of not more than \$500] \$1,000¹. Each day during which any violation of this act continues shall constitute a separate and distinct offense.

As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et seq.), when the Commissioner of Labor finds that an employer has violated that act, the commissioner is authorized to assess and² collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.] ³When determining the

amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business.³ No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section ²[or through a summary proceeding under P.L.1965, c.173 (C.34:11-4.1 et seq.) pursuant to] "the penalty enforcement law," N.J.S.2A:58-1 et seq.,² shall be applied toward ¹[the costs of the Department of Labor in enforcing the provisions of P.L.1965, c.173 (C.34:11-4.1 et seq.)] enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1965, c.173, s.10) *OK*

REPLACE SECTION 4 TO READ:

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

34:11-58. The commissioner is authorized and empowered to investigate any claim for wages due an employee and in such investigation may summon the defendant, subpoena witnesses, administer oaths, take testimony and shall upon such [hearing] proceeding make a decision or award [where] when the sum in controversy, exclusive of costs, does not exceed [\$2,000.00] \$10,000.00.

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

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

¹The commissioner is authorized to supervise the payment of amounts due to employees under an award made pursuant to this section, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to ³not less than 10% or more than ³25% of any payment made to the commissioner pursuant to this section. ³The amount

of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)³ The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

(cf: P.L.1985, c.135, s.1) OK

REPLACE SECTION 5 TO READ:

5. Section 23 of P.L.1966, c.113 (C.34:11-56a22) is amended to read as follows:

23. Any employer who willfully hinders or delays the commissioner, the director or their authorized representatives in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner, the director or their authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner, the director or their authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or any wage order issued pursuant thereto, or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a [misdemeanor and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$500.00 or by imprisonment of not less than 10 nor more than 90 days or by both such fine and imprisonment] disorderly persons offense and shall, upon conviction for a first violation, be punished by a fine of not less than \$100 nor more than ¹[\$500] \$1,000¹ or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not ¹less than 10 nor¹ more than 100 days or by both the fine and imprisonment. Each week, in any day of which an employee is paid less than the rate applicable to him under this act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), when the Commissioner of Labor finds that an individual has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1

~~et seq.).~~ ²~~[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.]~~ ³~~When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business.~~ ³ ~~No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary preceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq.~~ ² ~~Any sum collected as a fine or penalty pursuant to this section~~ ²~~[or through a summary proceeding under P.L.1965, c.173 (C.34:11-4.1 et seq.) pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]~~ ² ~~shall be applied toward~~ ¹~~[the costs of the Department of Labor in enforcing the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.)] enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.~~ ¹ (cf: P.L.1966, c.113, s.23) OK

REPLACE SECTION 6 TO READ:

6. Section 19 of P.L.1940, c.153 (C.34:2-21.19) is amended to read as follows:

19. Whoever employs or permits or suffers any minor to be employed or to work in violation of this act, or of any order or ruling issued under the provisions of this act, or obstructs the Department of Labor, its officers or agents, or any other person authorized to inspect places of employment under this act, and whoever, having under his control or custody any minor, permits or suffers him to be employed or to work in violation of this act, shall be guilty of an offense. [Where] ¹~~[When]~~ ¹~~If~~ a defendant acts knowingly, an offense under this section shall be a crime of the fourth degree. Otherwise it shall be a disorderly persons

offense¹ and the defendant shall, upon conviction for a violation, be punished by a fine of not less than \$100 nor more than \$1,000¹. Each day during which any violation of this act continues shall constitute a separate and distinct offense, and the employment of any minor in violation of the act shall with respect to each minor so employed, constitute a separate and distinct offense.

As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1940, c.153 (C.34:2-21.1 et seq.), when the Commissioner of Labor finds that an individual has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.]³When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer, and the size of the employer's business.³ No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section²[or through a summary proceeding under P.L.1940, c.153 (C.34:2-21.1 et seq.) and pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward¹[the costs of the Department of Labor in enforcing the provisions of P.L.1940, c.153 (C.34:2-21.1 et seq.)] enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1981, c.331, s.9) *OK*

REPLACE SECTION 15 TO READ:

¹15. Section 19 of P.L.1941, c.308 (C.34:6-136.19) is amended to read as follows:

19. Penalties. Any employer or person who: (1) Directly or indirectly in any way, distributes, delivers or causes to be distributed or delivered, or sells or causes to be sold, articles or materials for industrial home work in violation of any provision of ~~this act or of any rule, regulation or order issued thereunder;~~ or (2) Violates or fails to comply with any provision of this act or any rule, regulation or order issued thereunder; or (3) Does not possess a valid employer's permit issued by the commissioner pursuant to section 7 of this act or fails to comply with any provision or condition of that permit; or (4) Refuses to allow the commissioner or his authorized representative to enter his place of business or other place for the purpose of investigating in the enforcement of this act, and of inspecting any records required to be kept by section 10 of this act; or (5) Willfully makes a false statement or representation in order to lower the amount of fees due from him under this act; or (6) Makes any deduction from the wages or salary of a home worker in order to pay any portion of a payment which the employer or person is required to make by this act; shall be guilty of a disorderly persons offense and, upon conviction for a violation, shall be punished by a fine of not less than \$100 nor more than \$1,000. If an employer or person knowingly violates this act or if an employer or person commits a second violation or multiple violation of this act, that employer or person shall be guilty of a crime of the fourth degree. Each day a violation is continued and each home worker engaged in industrial home work directly or indirectly for or in behalf of the employer or person in violation of any provision of this act or any rule, regulation or order issued thereunder shall be considered a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of ²[this act,] any provision of Article 12 of chapter 6 of Title 34 of the Revised Statutes² when the Commissioner of Labor finds that an employer has violated ²[this act] that article², the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968,

c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.]³When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business.³ No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section²[or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1989, c.161, s.1) *OK*

REPLACE SECTION 18 TO READ:

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

11. Any employer who willfully hinders or delays the commissioner in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a [misdemeanor] disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than [\$500.00] \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a [workman] worker is paid less than the rate applicable to him under this act and each [workman] worker so paid, shall constitute a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of ²[this act] any provision of P.L. 1963, c. 150 (C. 34:11-56.25 et seq.)², when the Commissioner of Labor finds that an employer has violated ²[this] that² act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.]³When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business.³ No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section ²[or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

OK (cf: P.L.1963, c.150, s.11)

REPLACE SECTION 19 TO READ:

¹19. Section 12 of P.L.1963, c.150 (C.34:11-56.36) is amended to read as follows:

12. As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act, the commissioner is authorized to supervise the payment of amounts due to [workmen] workers under this act, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the [workmen] workers, and paid on order of the commissioner directly to the [workman] worker or [workmen] workers affected. The employer shall also pay the commissioner an administrative fee equal to ³not less than 10% or more than³ 25% of any payment made to the commissioner pursuant to of this section.

³The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).³ The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1963, c.150, s.12) OK

REPLACE SECTION 20 TO READ:

¹20. Section 15 of P.L.1963, c.150 (C.34:11-56.39) is amended to read as follows:

15. Any employer who discharges or in any other manner discriminates against any [workman] worker because [such workman] the worker has made any complaint to his employer, to the public body or to the commissioner that he has not been paid wages in accordance with the provisions of this act, or because [such workman] the worker has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because [such workman] the worker has testified or is about to testify in any such proceeding shall be guilty of a [misdemeanor] disorderly persons offense and shall, upon conviction therefor, be fined not less than [\$50.00] \$100 nor more than [\$200.00] \$1,000.

As an alternative to or in addition to any other sanctions provided by law for violations of ²[this act] any provision of P.L.1963, c.150 (C.34:11-56.25 et seq.)², when the Commissioner of Labor finds that an employer has violated ²[this] that² act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation

for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.]³ When determining the amount of the penalty imposed, because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business.³ No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S. 2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section² [or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,]² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1963, c.150, s.15) *OK*

REPLACE SECTION 21 TO READ:

121. Section 24 of P.L.1966, c.113 (C.34:11-56a23) is amended to read as follows:

24. As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act or of any rule or regulations duly issued hereunder, the Commissioner of Labor [and Industry] is authorized to supervise the payment of amounts due to employees under this act, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employee, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to³ not less than 10% or more than³ 25% of any payment made to the commissioner pursuant to this section.³ The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).³ The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

(cf: P.L.1966, c.113, s.24) *OK*

REPLACE SECTION 22 TO READ:

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

25. Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the commissioner, the director or to their authorized representatives that he has not been paid wages in accordance with the provisions of this act, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because such employee has testified or is about to testify in any such proceeding, or because such employee has served or is about to serve on a wage board, shall be guilty of a [misdemeanor] disorderly persons offense and shall, upon conviction therefor, be fined not less than ~~[\$50.00]~~ \$100 nor more than ~~[\$200.00]~~ \$1,000. Such employer shall be required, as a condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action, under penalty of contempt proceedings for failure to comply with such requirement.

As an alternative to or in addition to any other sanctions provided by law for violations of ²[this act] P.L.1966, c.113 (C.34:11-56a et seq.)², when the Commissioner of Labor finds that an employer has violated ²[this] that² act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). ²[Any administrative penalty imposed by the commissioner pursuant to this section shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination that the violation for which the penalty is imposed occurred, in which event final determination of the penalty shall be made as a declaratory ruling under section 8 of P.L.1968, c.410 (C.52:14B-8) and subject to review in the Appellate Division of the Superior Court.] ³When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business.³ No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an

opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.² Any sum collected as a fine or penalty pursuant to this section² or through a summary proceeding under this act pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.,² shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.¹

proceeding³

(cf: P.L.1966, c.113, s.25) *OK*

INSERT A NEW SECTION 27 TO READ:

³27. (New section) The Division of Workplace Standards shall conduct an extensive orientation program to educate new and existing employers about wage and hour laws and, as appropriate, other laws pertaining to workplace standards. To implement the program, the division may foster cooperative efforts with any appropriate business organization, trade association, civic or community organization or educational institution.³

RENUNBER SECTION 27 AS SECTION 28

STATEMENT

These Senate amendments provide that the administrative fee paid to the Division of Workplace Standards by an employer when the division collects wages due and owing from the employer to pay employees be not less than 10% or more than 25% of the amount collected. Unamended, the bill set the fee at 25%. The amendments require that the amount of the administrative fee be specified in a schedule of fees set by regulation of the Commissioner of Labor.

The amendments require that when determining the amount of the administrative penalty imposed because of a violation of workplace standards laws, the commissioner consider factors including the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business.

The bill also requires the Division of Workplace Standards to conduct an extensive orientation program to educate new and existing employers about wage and hour laws and, as appropriate, other laws pertaining to workplace standards. The bill permits the division, in its efforts to implement the program, to foster cooperative efforts with any appropriate business organization, trade association, civic or community organization or educational institution.