

# 34:8-68.1

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2011                      **CHAPTER:** 118

**NJSA:** 34:8-68.1 (Concerns employee leasing companies)

**BILL NO:** S2164 (Substituted for A3408)

**SPONSOR(S)** Burzichelli and others

**DATE INTRODUCED:** August 28, 2010

**COMMITTEE:**                      **ASSEMBLY:** Regulated Professions

**SENATE:** Labor

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                      **ASSEMBLY:** June 23, 2011

**SENATE:** June 29, 2011

**DATE OF APPROVAL:** August 19, 2011

### FOLLOWING ARE ATTACHED IF AVAILABLE:

#### FINAL TEXT OF BILL (Third Reprint enacted)

##### S2164

**SPONSOR'S STATEMENT:** (Begins on page 10 of introduced bill) Yes

**COMMITTEE STATEMENT:**    **ASSEMBLY:** Yes

**SENATE:** Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** Yes

**LEGISLATIVE FISCAL NOTE:** No

##### A3408

**SPONSOR'S STATEMENT:** (Begins on page 10 of introduced bill) Yes

**COMMITTEE STATEMENT:**    **ASSEMBLY:** Yes

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL NOTE:** No

(continued)

**VETO MESSAGE:** No

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

LAW/RWH

§6 - C.34:8-68.1  
Title 54.  
Subtitle 9.  
Chapter 54. (New)  
Employee Leasing  
Companies.  
§§7-12 -  
C.54:54-1 to  
54:54-6  
§13 - Note

P.L.2011, CHAPTER 118, *approved August 19, 2011*  
Senate, No. 2164 (*Third Reprint*)

1 AN ACT concerning employee leasing companies, amending and  
2 supplementing P.L.2001, c.260, and supplementing various parts  
3 of the statutory law.  
4

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

8 <sup>2</sup>1. Section 1 of P.L.2001, c.260 (C.34:8-67) is amended to read  
9 as follows:

10 1. For the purposes of this act:

11 "Assurance organization" means an independent and qualified  
12 entity approved by the commissioner to certify the qualifications of  
13 an employee leasing company or employee leasing company group  
14 for registration under P.L.2001, c.260 (C.34:8-67 et seq.).

15 "Client company" means a sole proprietorship, partnership,  
16 corporation or other business entity, which enters into an employee  
17 leasing agreement and is assigned employees by the employee  
18 leasing company.

19 "Commissioner" means the Commissioner of Labor and  
20 Workforce Development.

21 "Covered employee" means an individual co-employed by an  
22 employee leasing company and a client company pursuant to an  
23 employee leasing agreement.

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

26 "Employee leasing agreement" or "professional employer  
27 agreement" means an arrangement, under written contract, whereby:

28 (1) An employee leasing company and a client company co-  
29 employ covered employees; and

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Senate SLA committee amendments adopted July 19, 2010.

<sup>2</sup>Senate floor amendments adopted November 22, 2010.

<sup>3</sup>Assembly ARP committee amendments adopted June 13, 2011.

1 (2) The arrangement is intended to be, or is, ongoing rather than  
2 temporary in nature, and not aimed at temporarily supplementing  
3 the client company's work force.

4 "Employee leasing company" or "professional employer  
5 organization" means a sole proprietorship, partnership, corporation  
6 or other business entity, which devotes a substantial portion of its  
7 business to providing the services of employees pursuant to one or  
8 more employee leasing agreements and provides services of a  
9 nature customarily understood to be employer responsibilities  
10 including, but  
11 not limited to, those responsibilities provided in section 2 of this  
12 act.<sup>2</sup>

13 (cf: P.L.2001, c.260, s.1.)  
14

15 <sup>2</sup>[1.] 2.<sup>2</sup> Section 2 of P.L.2001, c.260 (C.34:8-68) is amended  
16 to read as follows:

17 2. a. Every employee leasing agreement shall provide that the  
18 employee leasing company:

19 (1) Reserves a right of direction and control over each covered  
20 employee assigned to the client company's location. However, a  
21 client company may retain sufficient direction and control over the  
22 covered employee as is necessary to conduct the client company's  
23 business and without which the client company would be unable to  
24 conduct its business, discharge any fiduciary responsibility that it  
25 may have, or comply with any applicable licensure, regulatory or  
26 statutory requirement of the client company;

27 (2) Assumes responsibility for the payment of wages to each  
28 covered employee without regard to payments by the client  
29 company to the employee leasing company, except that the  
30 provisions of this paragraph shall not affect the client company's  
31 obligations with respect to the payment of wages to covered  
32 employees;

33 (3) Assumes responsibility for the payment of payroll taxes and  
34 collection of taxes from payroll on each covered employee;

35 (4) Retains authority to hire, terminate, discipline, and reassign  
36 each covered employee. However, no covered employee shall be  
37 reassigned to another client company without that covered  
38 employee's consent and the client company may have the right to  
39 accept or cancel the assignment of any covered employee;

40 (5) Has given written notice of the relationship between the  
41 employee leasing company and the client company to each covered  
42 employee it assigns to perform services at the client company's  
43 work site;

44 (6) Shall, except for newly established business entities, hire its  
45 initial employee complement from among employees of the client  
46 company at the time of execution of the employee leasing  
47 agreement at comparable terms and conditions of employment as  
48 are in existence at the client company at the time of execution of the

1 employee leasing agreement and as designated by the client  
 2 company. Throughout the term of the employee leasing agreement  
 3 the covered employees shall be considered employees of the  
 4 employee leasing company and the client company and upon the  
 5 termination of the employee leasing agreement, the covered  
 6 employees shall be considered employees of the client company;

7 (7) Continue to honor and abide by existing collective  
 8 bargaining agreements applicable to covered employees. <sup>1</sup>【Upon  
 9 expiration of the employee leasing agreement, the】 The<sup>1</sup> client  
 10 company shall <sup>1</sup>also<sup>1</sup> continue to honor and abide by all collective  
 11 bargaining agreements applicable to covered employees. Every  
 12 employee leasing company which enters into a contract with a client  
 13 company, which has a collective bargaining representative for the  
 14 covered employees, shall require that client company to enter into  
 15 an agreement with the employee leasing company containing the  
 16 following language:

17 "The client company shall continue to honor and abide by the  
 18 terms of any applicable collective bargaining agreements, and upon  
 19 expiration thereof, any obligations of the client company to bargain  
 20 in good faith in connection with such collective bargaining  
 21 agreements shall not be affected in any manner by the employee  
 22 leasing agreement."

23 <sup>3</sup>(8) Shall provide workers' compensation insurance for their  
 24 covered employees.<sup>3</sup>

25 b. Every employee leasing agreement shall provide that 【the  
 26 employee leasing company and】 <sup>3</sup>the employee leasing company  
 27 and<sup>3</sup> the client company shall 【each】 <sup>3</sup>each<sup>3</sup> retain a right of  
 28 direction and control over management of safety, risk and hazard  
 29 control at the work site or sites affecting each covered employee  
 30 including:

31 (1) Responsibility for performing safety inspections of client  
 32 company equipment and premises; <sup>3</sup>and<sup>3</sup>

33 (2) Responsibility for the promulgation and administration of  
 34 employment and safety policies【; and】 <sup>3</sup>;<sup>3</sup> and<sup>3</sup>

35 【(3) Responsibility】 <sup>3</sup>【The employee leasing company shall be  
 36 responsible】 (3) Responsibility<sup>3</sup> for the management of workers'  
 37 compensation claims, the filings thereof, and procedures related  
 38 thereto.

39 c. Nothing in this section or this act shall alter the rights or  
 40 obligations of client companies, employee leasing companies or  
 41 covered employees under the National Labor Relations Act, 29  
 42 U.S.C. s.151 et seq.

43 d. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any  
 44 employee leasing agreement shall diminish, abolish or remove any  
 45 obligations of covered employees to a client company or any  
 46 obligations of any client company to a covered employee existing  
 47 prior to the effective date of an employee leasing agreement, or

1 create any new or additional enforceable right of a covered  
2 employee against an employee leasing company that is not  
3 specifically provided by the appropriate employee leasing  
4 agreement <sup>3</sup>or<sup>3</sup> P.L.2001, c.260 (C.34:8-67 et seq.).

5 (2) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any  
6 employee leasing agreement shall affect, modify, or amend any  
7 contractual relationship or restrictive covenant between a covered  
8 employee and any client company in effect at the time an employee  
9 leasing agreement becomes effective; nor shall it prohibit or amend  
10 any contractual relationship or restrictive covenant that is entered  
11 into subsequently between a client company and a covered  
12 employee. An employee leasing company shall have no  
13 responsibility or liability in connection with, or arising out of, any  
14 such existing or new contractual relationship or restrictive covenant  
15 unless the employee leasing company has specifically agreed  
16 otherwise in writing.

17 e. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any  
18 employee leasing agreement shall affect, modify or amend any state  
19 or local registration or certification requirement applicable to any  
20 client company or covered employee.

21 (2) A covered employee who is required to be licensed,  
22 registered, or certified <sup>3</sup>[or undergo a criminal background check]<sup>3</sup>  
23 pursuant to any State law or regulation shall be considered solely an  
24 employee of the client company for purposes of that license,  
25 registration, or certification requirement.

26 (3) An employee leasing company shall not be deemed to  
27 engage in any occupation, trade, profession, or other activity that is  
28 subject to licensing, registration, or certification requirements, or is  
29 otherwise regulated by a governmental entity, solely by entering  
30 into an employee leasing agreement with a client company who is  
31 subject to those requirements or regulation.

32 (4) A client company shall have the sole right of direction and  
33 control of the professional or licensed activities of covered  
34 employees and the client company's business. Those covered  
35 employees and client companies shall remain subject to regulation  
36 by the regulatory or governmental entity responsible for licensing,  
37 registration, or certification of those covered employees or client  
38 companies.

39 f. A client company's certification as a small, minority-owned,  
40 disadvantaged, woman-owned business enterprise or a historically  
41 underutilized business for the purposes of any bid, contract,  
42 purchase order, or agreement entered into with the State or a  
43 political subdivision of the State, shall not be affected because the  
44 client company has entered into an employee leasing agreement  
45 with an employee leasing company.

46 g. Any benefit that a client company is required to provide to  
47 covered employees that is provided to covered employees by an  
48 employee leasing company through an employee leasing agreement

1 shall be credited against the client company's obligation to fulfill  
2 the requirement.

3 (cf: P.L.2001, c.260, s.2)

4

5 <sup>2</sup>[2.] 3.<sup>2</sup> Section 4 of P.L.2001, c.260 (C.34:8-70) is amended  
6 to read as follows:

7 4. a. An employee leasing company shall register with the  
8 commissioner and provide a list of its client companies with  
9 covered employees in this State, both upon the initial registration of  
10 the employee leasing company, and thereafter, annually by January  
11 31st, listing all client companies as of the immediately  
12 <sup>3</sup>[proceeding] preceding<sup>3</sup> December 31st. The list shall include the  
13 following information with regard to each client company:

- 14 (1) Client company's name;
- 15 (2) Client company's physical location address;
- 16 (3) Description of client company's economic activity;
- 17 (4) Client company's state tax identification number;
- 18 (5) Percent of client company's workforce being leased;
- 19 (6) Effective date and duration of employee leasing agreement;
- 20 (7) A copy of the standard form of agreement entered into  
21 between the employee leasing company and the client company;

22 (a) The standard form of agreement shall be accompanied by a  
23 certified list of all client companies with covered employees in this  
24 State contracting with the employee leasing company for its  
25 services.

26 (b) The employee leasing company shall be required to notify  
27 the Department of Labor and Workforce Development on an annual  
28 basis of any <sup>2</sup>[material] <sup>3</sup>[substantive<sup>2</sup>] material<sup>3</sup> changes in the  
29 standard form of agreement which relate to the requirements set  
30 forth in section 2 of this act, and when any particular client  
31 company has agreed to terms which deviate from the standard form  
32 of agreement;

33 (8) Proof of written disclosure to client companies upon the  
34 signing of an employee leasing agreement, as required in section 8  
35 of this act;

36 (9) Proof of current workers' compensation coverage, which  
37 may be in the form of a letter from the insurance carrier, and which  
38 shall include the name of the carrier, date of commencement of  
39 coverage under the policy, term of the coverage, and verification of  
40 premiums paid; and

41 (10) Confirmation that all leased employees are covered by  
42 workers' compensation insurance.

43 b. Employee leasing companies shall also report to the  
44 department, on a quarterly basis, wage information regarding each  
45 covered employee as required by law, rule or regulation.

46 c. All records, reports and other information obtained from  
47 employee leasing companies under this act, except to the extent  
48 necessary for the proper administration by the department of this act

1 and all applicable labor laws, shall be confidential and shall not be  
2 published or open to public inspection other than to public  
3 employees in the performance of their public duties.

4 d. The department shall establish a limited registration <sup>2</sup>and  
5 renewal<sup>2</sup> process and appropriate forms for an employee leasing  
6 company that (1) is not domiciled in this State; (2) is licensed or  
7 registered as an employee leasing company or professional  
8 employer organization in another state; (3) does not maintain an  
9 office in this State or directly solicit client companies located or  
10 domiciled in this State; and (4) is not <sup>2</sup>[on any single day]<sup>2</sup>  
11 responsible for more than 50 covered employees employed in this  
12 State <sup>2</sup>on the date of registration or renewal. If during the term of a  
13 limited registration an employee leasing company becomes  
14 responsible for more than 50 covered employees, the employee  
15 leasing company shall re-register with the department pursuant to  
16 subsection a. of this section <sup>3</sup>within 30 days of the end of the  
17 quarter in which the employee leasing company became responsible  
18 for more than 50 covered employees<sup>3</sup>, but shall not be charged any  
19 additional registration fee<sup>2 3</sup>, if a registration fee is required<sup>3</sup>. An  
20 employee leasing company requesting a limited registration  
21 pursuant to this subsection shall provide the department with a list  
22 of client companies and the number of covered employees at each  
23 of those companies and such other <sup>3</sup>[minimal]<sup>3</sup> information as the  
24 department shall prescribe. Any employee leasing company  
25 receiving a limited registration from the department shall not be  
26 required to comply with the provisions of subsection a. and b. of  
27 <sup>1</sup>[this]<sup>1</sup> section <sup>1</sup>5 of P.L.2001, c.260 (C.34:8-71)<sup>1</sup>.

28 e. <sup>2</sup>Two or more employee leasing companies that are majority  
29 owned by the same ultimate parent company, entity or person may  
30 register as an employee leasing company group, and may satisfy the  
31 registration requirements imposed pursuant to this section and the  
32 financial reporting required pursuant to section 5 of P.L. 2001, c.  
33 260 (C.34:8-71), and any other <sup>3</sup>[reporting] filing<sup>3</sup> requirements  
34 authorized by the department, on a combined or consolidated basis  
35 <sup>3</sup>, provided that the employee leasing company group demonstrates  
36 positive working capital pursuant to section 5 of P.L.2001, c.260  
37 (C.34:8-71)<sup>3</sup>. Each employee leasing company covered under an  
38 employee leasing <sup>3</sup>company<sup>3</sup> group registration shall guarantee the  
39 financial capacity obligations of each other employee leasing  
40 company covered under the employee leasing company group  
41 registration.

42 f.<sup>2 3</sup>[Every] The department may require that every<sup>3</sup> initial  
43 application and subsequent annual reporting submitted pursuant to  
44 this section shall be accompanied by a fee of <sup>3</sup>up to<sup>3</sup> \$500.  
45 <sup>3</sup>[<sup>2</sup>Every] If such a fee is required, every<sup>3</sup> initial application and  
46 subsequent annual reporting submitted by an employee leasing



1 company group pursuant to subsection e. of this section shall be  
2 accompanied by a fee of <sup>3</sup>[\$500] the required amount<sup>3</sup> for each  
3 employee leasing company included in the employee leasing  
4 company group.<sup>2</sup>

5 (cf: P.L.2001, c.260, s.4)

6  
7 <sup>2</sup>[3.] <sup>4.</sup><sup>2</sup> Section 5 of P.L.2001, c.260 (C.34:8-71) is amended  
8 to read as follows:

9 5. a. (1) Every initial registration and subsequent annual  
10 reporting shall be accompanied by [a reviewed] <sup>2</sup>[an audited] a<sup>2</sup>  
11 financial statement prepared <sup>2</sup>in accordance with generally accepted  
12 accounting <sup>3</sup>[principals] principles<sup>3</sup> and audited <sup>2</sup> by an  
13 independent certified public accountant <sup>2</sup>[in accordance with  
14 generally accepted accounting principles]<sup>2</sup> [within six months prior  
15 to the date of application or renewal], which statement shall show a  
16 [minimum net worth of \$100,000] positive working capital,  
17 computed as current assets minus current liabilities. The  
18 <sup>2</sup>[audited]<sup>2</sup> financial statement shall be without qualification as to  
19 the going concern status of the employee leasing company.

20 (2) At the time of an application for an initial registration an  
21 employee leasing company shall submit <sup>3</sup>to the department<sup>3</sup> an  
22 audited financial statement prepared within 13 months of the  
23 application. Thereafter, an employee leasing company shall file  
24 <sup>3</sup>with the department<sup>3</sup> on an annual basis, within 180 days of the  
25 end of the employee leasing company's fiscal year, a current  
26 audited financial statement. An employee leasing company may  
27 request the department for an extension for this filing, which shall  
28 be accompanied by a letter from the employee leasing company's  
29 independent certified public accountant stating the reasons for the  
30 requested extension and the anticipated date of the completion of  
31 the audited financial statement.

32 b. (1) [As a substitute for the requirement set forth in  
33 subsection a. of this section, the commissioner, or his designee, may  
34 require that the employee leasing company deposit in a depository  
35 designated by the commissioner a bond or securities with a market  
36 value of \$75,000.] An employee leasing company that does not  
37 have a positive working capital may provide to the department, in  
38 lieu thereof, a bond, irrevocable letter of credit, or securities with a  
39 minimum market value equaling the amount necessary to achieve a  
40 positive working capital plus <sup>2</sup>up to<sup>2</sup> \$100,000 <sup>2</sup>, such additional  
41 amount to be determined by the commissioner or his designee<sup>2</sup>.  
42 The securities so deposited shall include authorizations to the  
43 commissioner, or his designee, to sell those securities in an amount  
44 sufficient to pay any taxes, wages, benefits or other entitlement due  
45 a covered employee, if the employee leasing company does not  
46 make those payments when due. <sup>3</sup>The provisions of this paragraph

1 shall not apply to an employee leasing company group registered  
2 pursuant to subsection e. of section 4 of P.L.2001, c.260 (C.34:8-  
3 70).<sup>3</sup>

4 (2) The commissioner, or his designee, may also require that  
5 bond or deposit if the commissioner finds that the leasing company  
6 has had its license or registration suspended, denied, or limited in  
7 any other jurisdiction; or that there have been instances in which the  
8 employee leasing company has not paid covered employees' wages  
9 or benefits when due, or failed to make timely payment of any  
10 federal or state payroll taxes or unemployment compensation  
11 contributions when due, or for other good cause.

12 (3) Any bond or securities deposited under this subsection shall  
13 not be included for the purpose of the calculation of <sup>1</sup>**[net worth]**  
14 positive working capital<sup>1</sup> required by subsection a. of this section.

15 c. An employee leasing company shall submit to the  
16 commissioner, or his designee, within 60 days after the end of each  
17 calendar quarter, a certification by an independent certified public  
18 accountant that all applicable federal and state payroll taxes for  
19 covered employees in this State have been paid on a timely basis for  
20 that quarter. If the commissioner or his designee does not receive  
21 that certification within the 60-day period, the department shall  
22 notify the employee leasing company within five <sup>2</sup>**[calendar]**  
23 business<sup>2</sup> days of the expiration of the 60-day period. If that  
24 certification is not received within 10 <sup>2</sup>**[calendar]** business<sup>2</sup> days  
25 following the notification by the department, the department shall  
26 notify the client companies listed on the employee leasing  
27 company's annual report required pursuant to section 4 of this act  
28 that the certification was not received.

29 d. <sup>2</sup>Two or more employee leasing companies that are majority  
30 owned by the same ultimate parent company, entity or person may  
31 comply with the provisions of this section pursuant to subsection e.  
32 of section 4 of P.L. 2001, c. 260 (C.34:8-70).

33 e.<sup>2</sup> The department may adopt, pursuant to the "Administrative  
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and  
35 regulations to permit, to the extent <sup>2</sup>**[practicable]** authorized  
36 pursuant to the "Uniform Electronic Transactions Act," P.L.2001,  
37 c.116 (C.12A:12-1 et seq.)<sup>2</sup>, employee leasing companies to  
38 electronically file applications, documents, reports and other filings  
39 required by P.L.2001, c.260 (C.34:8-67 et seq.). <sup>3</sup>**[<sup>2</sup>Those]** The  
40 department may also adopt, pursuant to the "Administrative  
41 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),<sup>3</sup> rules  
42 <sup>3</sup>**[may]** to<sup>3</sup> provide for the acceptance of electronic filings and  
43 other assurance by an <sup>3</sup>**[independent and qualified]**<sup>3</sup> assurance  
44 organization <sup>3</sup>**[approved by the commissioner]**<sup>3</sup> that provides  
45 satisfactory assurance of compliance acceptable to the department  
46 consistent with or in lieu of the requirements of section 4 of

1 P.L.2001, c.260 (C.34:8-70 <sup>3</sup>[and C.34:8-71]<sup>3</sup>) and of this section  
2 and other requirements of P.L.2001, c.260 (C.34:8-67 et seq.) or the  
3 rules promulgated pursuant to it. The rules may permit an  
4 employee leasing company or an employee leasing company group  
5 to authorize an assurance organization <sup>3</sup>[approved by the  
6 commissioner]<sup>3</sup> to act on behalf of an employee leasing company  
7 or an employee leasing company group in complying with  
8 P.L.2001, c.260 (C.34:8-67 et seq.) and any rules and regulations  
9 adopted pursuant thereto, including electronic filings of information  
10 and payment of fees <sup>3</sup>that may be required<sup>3</sup>. The rules and  
11 regulations adopted pursuant to this subsection may include, but  
12 need not be limited to, <sup>3</sup>[a requirement that any independent  
13 assurance organization be approved by the commissioner and]<sup>3</sup> an  
14 identification of those other provisions of P.L.2001, c.260 (C.34:8-  
15 67 et seq.) that may be complied with through an independent  
16 assurance organization. Use of an approved assurance organization  
17 shall be optional and not mandatory for an employee leasing  
18 company or an employee leasing company group. Nothing in this  
19 subsection shall limit or change the department's authority to  
20 register or rescind the registration of an employee leasing company  
21 or to investigate or enforce any provision of P.L.2001, c.260  
22 (C.34:8-67 et seq.).<sup>2</sup>

23 (cf: P.L.2001, c.260, s.5)

24  
25 <sup>3</sup>5. Section 6 of P.L.2002, c.260 (C.34:8-72) is amended to read  
26 as follows:

27 6. a. An employee leasing company registered under this act and  
28 the respective client companies with which it has entered into  
29 employee leasing agreements shall be the co-employers of their  
30 covered employees for the payment of wages and other employment  
31 benefits due, including the obligation under the workers'  
32 compensation law, R.S.34:15-1 et seq., to maintain insurance  
33 coverage for covered employees for personal injuries to, or for the  
34 death of, those employees by accident arising out of and in the  
35 course of employment through policies issued by an insurance  
36 carrier licensed in the State of New Jersey. Such policies shall state  
37 the name of the employee leasing company as the labor contractor  
38 for each client company, by name.

39 b. For purposes of this act, the agreement between the  
40 employee leasing company and the client company shall be one of  
41 co-employment, whereby the employee leasing company, having  
42 accepted the responsibilities set forth in section 2 of this act, may  
43 submit reports to the department and make contributions to the  
44 Unemployment Compensation and State Disability Benefits Funds  
45 in the manner prescribed in section 7 of the this act, on behalf of  
46 those covered employees covered by the employee leasing  
47 agreement. In addition, the provisions of R.S.34:15-8, regarding

1 the exclusivity of the remedy under the workers' compensation law  
2 for personal injuries to, or for the death of, employees by accident  
3 arising out of and in the course of their employment, shall apply to  
4 the employee leasing company and the client company, and their  
5 employees.

6 c. The employee leasing company shall file reports prescribed  
7 under the "unemployment compensation law," R.S.43:21-1 et seq.  
8 on behalf of its covered employees using the State tax identification  
9 number of the employee leasing company.<sup>3</sup>  
10 (cf:P.L.2001, c.260, s.6)

11  
12 <sup>2</sup>[4.] <sup>3</sup>[5.] 6.<sup>3</sup> (New section) a. Except to the extent  
13 otherwise expressly provided by an applicable employee leasing  
14 agreement, a client company shall be solely responsible for the  
15 quality, adequacy or safety of the goods or services produced or  
16 sold in the client company's business, for directing, supervising,  
17 training and controlling the work of the covered employees with  
18 respect to the business activities of the client company, and for the  
19 acts, errors or omissions of covered employees with regard to those  
20 activities.

21 b. Except to the extent otherwise expressly provided by an  
22 applicable employee leasing agreement, a client company shall not  
23 be liable for the acts, errors or omissions of an employee leasing  
24 company, or of any covered employee when the covered employee  
25 is acting under the express direction and control of the employee  
26 leasing company, and an employee leasing company shall not be  
27 liable for the acts, errors, or omissions of a client company or of  
28 any covered employee when the covered employee is acting under  
29 the express direction and control of the client company.

30 c. Except to the extent otherwise expressly provided by an  
31 applicable employee leasing agreement or other employment  
32 contract, insurance contract or bond, a covered employee shall not  
33 be considered, solely as the result of being a covered employee, an  
34 employee of the employee leasing company for purposes of general  
35 liability insurance, fidelity bonds, surety bonds, employer's liability  
36 which is not covered by workers' compensation, or other liability  
37 insurance carried by the employee leasing company.

38  
39 <sup>2</sup>[5.] <sup>3</sup>[6.<sup>2</sup>] 7.<sup>3</sup> (New section) For purposes of determining  
40 economic incentives or benefit based on employment provided by  
41 law, rule or regulation by the State or other government entity,  
42 covered employees of a client company shall be considered  
43 employees solely of the client company, and the client company  
44 shall be entitled to the benefit of any economic incentive or other  
45 benefit based on the number of the client company's covered  
46 employees, notwithstanding that an employee leasing company is  
47 the W-2 reporting employer for the covered employees. Each client  
48 company shall be treated as employing only those covered

1 employees co-employed by the client company, and not covered  
 2 employees employed by other client companies of the employee  
 3 leasing company. Each employee leasing company shall provide,  
 4 upon request by the State or any political subdivision thereof,  
 5 employment information reasonably required for the administration  
 6 of any economic incentive or benefit program. Each employee  
 7 leasing company shall provide, upon request by a client company,  
 8 employment information necessary to support any request, claim,  
 9 application, or other action by a client company seeking any such  
 10 economic incentive or benefit. As used in this section, “covered  
 11 employee,” “client company,” and “employee leasing company”  
 12 shall have the same meaning as set forth in section 1 of P.L.2001,  
 13 c.260 (C.34:8-67).

14  
 15 <sup>2</sup>[6.] <sup>3</sup>[7.<sup>2</sup>] 8.<sup>3</sup> (New section). For the purposes of  
 16 implementing the “Sales and Use Tax Act,” (P.L.1966, c.30;  
 17 C.54:32B-1 et seq.) any taxes due for services performed by  
 18 covered employees shall be paid by the client company and not by  
 19 the employee leasing company. As used in this section “covered  
 20 employee,” “client company” and “employee leasing company”  
 21 shall have the same meaning as set forth in section 1 of P.L.2001,  
 22 c.260 (C. 34:8-67).

23  
 24 <sup>2</sup>[7.] <sup>3</sup>[8.<sup>2</sup>] 9.<sup>3</sup> (New section) For the purposes of  
 25 implementing the “Sales and Use Tax Act,” P.L.1966, c.30;  
 26 C.54:32B-1 et seq.) any sales tax imposed on employee leasing  
 27 services provided by an employee leasing company to a client  
 28 company <sup>3</sup>pursuant to a law enacted after the effective date of  
 29 P.L.2011, c. (C. ) pending before the Legislature as this bill<sup>3</sup>  
 30 shall be imposed only on receipts that reflect the amounts charged  
 31 to client companies for employee leasing services and not on  
 32 receipts that represent the amounts charged for the payment of  
 33 wages, salaries, benefits, worker’s compensation costs, withholding  
 34 taxes, or other assessments paid to or on behalf of a covered  
 35 employee by the employee leasing company under an employee  
 36 leasing agreement. As used in this section, “employee leasing  
 37 company,” “client company,” “covered employee” and “employee  
 38 leasing agreement” shall have the same meaning as set forth in  
 39 section 1 of P.L.2001, c.260 (C.34:8-67).

40  
 41 <sup>2</sup>[8.] <sup>3</sup>[9.<sup>2</sup>] 10.<sup>3</sup> (New section) For the purposes of  
 42 implementing any tax imposed on an employer on a per employee  
 43 basis, the tax <sup>2</sup>[shall be]<sup>2</sup> imposed on a client company <sup>2</sup>[for] shall  
 44 be calculated on the basis of<sup>2</sup> its covered employees <sup>2</sup>, <sup>2</sup> and <sup>2</sup>the tax  
 45 imposed<sup>2</sup> on an employee leasing company <sup>2</sup>[for] shall be  
 46 calculated on the basis of<sup>2</sup> its employees that are not covered  
 47 employees. As used in this section, “employee leasing company,”

1 “client company,” and “covered employee” shall have the same  
2 meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

3  
4 <sup>2</sup>[9.] <sup>3</sup>[10.2] 11.<sup>3</sup> New section) For the purposes of  
5 implementing any tax imposed on an employer on the basis of total  
6 payroll, an employee leasing company, in computing the tax on  
7 behalf of the client company, shall be authorized to apply any small  
8 business allowance or exemption made available pursuant to law to  
9 the client company for covered employees. As used in this section,  
10 “employee leasing company,” “client company,” and “covered  
11 employee” shall have the same meaning as set forth in section 1 of  
12 P.L.2001, c.260 (C.34:8-67).

13  
14 <sup>2</sup>[10.] <sup>3</sup>[11.2] 12.<sup>3</sup> (New section) For the purposes of  
15 determining any tax credit based on employment provided by law,  
16 rule or regulation by the State, covered employees of a client  
17 company shall be considered employees solely of the client  
18 company, and the client company shall be entitled to the tax credit  
19 based on the number of the client company’s covered employees,  
20 notwithstanding that an employee leasing company is the W-2  
21 reporting employer for the covered employees. Each client company  
22 shall be treated as employing only those covered employees co-  
23 employed by the client company, and not covered employees  
24 employed by other client companies of the employee leasing  
25 company. Each employee leasing company shall provide, upon  
26 request of the Division of Taxation in the Department of the  
27 Treasury, employment information reasonably required for the  
28 administration of any tax credit program. Each employee leasing  
29 company shall provide, upon request by a client company,  
30 employment information necessary to support any request, claim,  
31 application, or other action by a client company seeking any such  
32 tax credit. As used in this section, “employee leasing company,”  
33 “client company,” and “covered employee” shall have the same  
34 meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

35  
36 <sup>2</sup>[11.] <sup>3</sup>[12.2] 13.<sup>3</sup> This act shall take effect <sup>2</sup>[nine] 12<sup>2</sup>  
37 months following enactment.

38  
39  
40  
41  
42 \_\_\_\_\_  
Concerns employee leasing companies.

**SENATE, No. 2164**

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**STATE OF NEW JERSEY**

**214th LEGISLATURE**

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INTRODUCED JUNE 28, 2010

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**SYNOPSIS**

Concerns employee leasing companies.

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT concerning employee leasing companies, amending and  
2 supplementing P.L.2001, c.260, and supplementing various parts  
3 of the statutory law.

4

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

7

8 1. Section 2 of P.L.2001, c.260 (C.34:8-68) is amended to read  
9 as follows:

10 2. a. Every employee leasing agreement shall provide that the  
11 employee leasing company:

12 (1) Reserves a right of direction and control over each covered  
13 employee assigned to the client company's location. However, a  
14 client company may retain sufficient direction and control over the  
15 covered employee as is necessary to conduct the client company's  
16 business and without which the client company would be unable to  
17 conduct its business, discharge any fiduciary responsibility that it  
18 may have, or comply with any applicable licensure, regulatory or  
19 statutory requirement of the client company;

20 (2) Assumes responsibility for the payment of wages to each  
21 covered employee without regard to payments by the client  
22 company to the employee leasing company, except that the  
23 provisions of this paragraph shall not affect the client company's  
24 obligations with respect to the payment of wages to covered  
25 employees;

26 (3) Assumes responsibility for the payment of payroll taxes and  
27 collection of taxes from payroll on each covered employee;

28 (4) Retains authority to hire, terminate, discipline, and reassign  
29 each covered employee. However, no covered employee shall be  
30 reassigned to another client company without that covered  
31 employee's consent and the client company may have the right to  
32 accept or cancel the assignment of any covered employee;

33 (5) Has given written notice of the relationship between the  
34 employee leasing company and the client company to each covered  
35 employee it assigns to perform services at the client company's  
36 work site;

37 (6) Shall, except for newly established business entities, hire its  
38 initial employee complement from among employees of the client  
39 company at the time of execution of the employee leasing  
40 agreement at comparable terms and conditions of employment as  
41 are in existence at the client company at the time of execution of the  
42 employee leasing agreement and as designated by the client  
43 company. Throughout the term of the employee leasing agreement  
44 the covered employees shall be considered employees of the  
45 employee leasing company and the client company and upon the

**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 termination of the employee leasing agreement, the covered  
2 employees shall be considered employees of the client company;

3 (7) Continue to honor and abide by existing collective  
4 bargaining agreements applicable to covered employees. Upon  
5 expiration of the employee leasing agreement, the client company  
6 shall continue to honor and abide by all collective bargaining  
7 agreements applicable to covered employees. Every employee  
8 leasing company which enters into a contract with a client  
9 company, which has a collective bargaining representative for the  
10 covered employees, shall require that client company to enter into  
11 an agreement with the employee leasing company containing the  
12 following language:

13 "The client company shall continue to honor and abide by the  
14 terms of any applicable collective bargaining agreements, and upon  
15 expiration thereof, any obligations of the client company to bargain  
16 in good faith in connection with such collective bargaining  
17 agreements shall not be affected in any manner by the employee  
18 leasing agreement."

19 b. Every employee leasing agreement shall provide that [the  
20 employee leasing company and] the client company shall [each]  
21 retain a right of direction and control over management of safety,  
22 risk and hazard control at the work site or sites affecting each  
23 covered employee including:

24 (1) Responsibility for performing safety inspections of client  
25 company equipment and premises; and

26 (2) Responsibility for the promulgation and administration of  
27 employment and safety policies[; and].

28 **[(3) Responsibility]** The employee leasing company shall be  
29 responsible for the management of workers' compensation claims,  
30 the filings thereof, and procedures related thereto.

31 c. Nothing in this section or this act shall alter the rights or  
32 obligations of client companies, employee leasing companies or  
33 covered employees under the National Labor Relations Act, 29  
34 U.S.C. s.151 et seq.

35 d. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any  
36 employee leasing agreement shall diminish, abolish or remove any  
37 obligations of covered employees to a client company or any  
38 obligations of any client company to a covered employee existing  
39 prior to the effective date of an employee leasing agreement, or  
40 create any new or additional enforceable right of a covered  
41 employee against an employee leasing company that is not  
42 specifically provided by the appropriate employee leasing  
43 agreement P.L.2001, c.260 (C.34:8-67 et seq.).

44 (2) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any  
45 employee leasing agreement shall affect, modify, or amend any  
46 contractual relationship or restrictive covenant between a covered  
47 employee and any client company in effect at the time an employee  
48 leasing agreement becomes effective; nor shall it prohibit or amend

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4

1 any contractual relationship or restrictive covenant that is entered  
2 into subsequently between a client company and a covered  
3 employee. An employee leasing company shall have no  
4 responsibility or liability in connection with, or arising out of, any  
5 such existing or new contractual relationship or restrictive covenant  
6 unless the employee leasing company has specifically agreed  
7 otherwise in writing.

8 e. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any  
9 employee leasing agreement shall affect, modify or amend any state  
10 or local registration or certification requirement applicable to any  
11 client company or covered employee.

12 (2) A covered employee who is required to be licensed,  
13 registered, or certified or undergo a criminal background check  
14 pursuant to any State law or regulation shall be considered solely an  
15 employee of the client company for purposes of that license,  
16 registration, or certification requirement.

17 (3) An employee leasing company shall not be deemed to  
18 engage in any occupation, trade, profession, or other activity that is  
19 subject to licensing, registration, or certification requirements, or is  
20 otherwise regulated by a governmental entity, solely by entering  
21 into an employee leasing agreement with a client company who is  
22 subject to those requirements or regulation.

23 (4) A client company shall have the sole right of direction and  
24 control of the professional or licensed activities of covered  
25 employees and the client company's business. Those covered  
26 employees and client companies shall remain subject to regulation  
27 by the regulatory or governmental entity responsible for licensing,  
28 registration, or certification of those covered employees or client  
29 companies.

30 f. A client company's certification as a small, minority-owned,  
31 disadvantaged, woman-owned business enterprise or a historically  
32 underutilized business for the purposes of any bid, contract,  
33 purchase order, or agreement entered into with the State or a  
34 political subdivision of the State, shall not be affected because the  
35 client company has entered into an employee leasing agreement  
36 with an employee leasing company.

37 g. Any benefit that a client company is required to provide to  
38 covered employees that is provided to covered employees by an  
39 employee leasing company through an employee leasing agreement  
40 shall be credited against the client company's obligation to fulfill  
41 the requirement.

42 (cf: P.L.2001, c.260, s.2)

43  
44 2. Section 4 of P.L.2001, c.260 (C.34:8-70) is amended to read  
45 as follows:

46 4. a. An employee leasing company shall register with the  
47 commissioner and provide a list of its client companies with  
48 covered employees in this State, both upon the initial registration of

1 the employee leasing company, and thereafter, annually by January  
2 31st, listing all client companies as of the immediately proceeding  
3 December 31st. The list shall include the following information  
4 with regard to each client company:

- 5 (1) Client company's name;
- 6 (2) Client company's physical location address;
- 7 (3) Description of client company's economic activity;
- 8 (4) Client company's state tax identification number;
- 9 (5) Percent of client company's workforce being leased;
- 10 (6) Effective date and duration of employee leasing agreement;
- 11 (7) A copy of the standard form of agreement entered into  
12 between the employee leasing company and the client company;  
13 (a) The standard form of agreement shall be accompanied by a  
14 certified list of all client companies with covered employees in this  
15 State contracting with the employee leasing company for its  
16 services.  
17 (b) The employee leasing company shall be required to notify  
18 the Department of Labor and Workforce Development on an annual  
19 basis of any material changes in the standard form of agreement  
20 which relate to the requirements set forth in section 2 of this act,  
21 and when any particular client company has agreed to terms which  
22 deviate from the standard form of agreement;
- 23 (8) Proof of written disclosure to client companies upon the  
24 signing of an employee leasing agreement, as required in section 8  
25 of this act;
- 26 (9) Proof of current workers' compensation coverage, which  
27 may be in the form of a letter from the insurance carrier, and which  
28 shall include the name of the carrier, date of commencement of  
29 coverage under the policy, term of the coverage, and verification of  
30 premiums paid; and  
31 (10) Confirmation that all leased employees are covered by  
32 workers' compensation insurance.

33 b. Employee leasing companies shall also report to the  
34 department, on a quarterly basis, wage information regarding each  
35 covered employee as required by law, rule or regulation.

36 c. All records, reports and other information obtained from  
37 employee leasing companies under this act, except to the extent  
38 necessary for the proper administration by the department of this act  
39 and all applicable labor laws, shall be confidential and shall not be  
40 published or open to public inspection other than to public  
41 employees in the performance of their public duties.

42 d. The department shall establish a limited registration process  
43 and appropriate forms for an employee leasing company that (1) is  
44 not domiciled in this State; (2) is licensed or registered as an  
45 employee leasing company or professional employer organization in  
46 another state; (3) does not maintain an office in this State or directly  
47 solicit client companies located or domiciled in this State; and (4) is  
48 not on any single day responsible for more than 50 covered

1 employees employed in this State. An employee leasing company  
2 requesting a limited registration pursuant to this subsection shall  
3 provide the department with a list of client companies and the  
4 number of covered employees at each of those companies and such  
5 other minimal information as the department shall prescribe. Any  
6 employee leasing company receiving a limited registration from the  
7 department shall not be required to comply with the provisions of  
8 subsection a. and b. of this section.

9 e. Every initial application and subsequent annual reporting  
10 submitted pursuant to this section shall be accompanied by a fee of  
11 \$500.

12 (cf: P.L.2001, c.260, s.4)

13

14 3. Section 5 of P.L.2001, c.260 (C.34:8-71) is amended to read  
15 as follows:

16 5. a. (1) Every initial registration and subsequent annual  
17 reporting shall be accompanied by **【a reviewed】** an audited  
18 financial statement prepared by an independent certified public  
19 accountant in accordance with generally accepted accounting  
20 principles **【within six months prior to the date of application or**  
21 renewal**】**, which statement shall show a **【minimum net worth of**  
22 **【\$100,000】** positive working capital, computed as current assets  
23 minus current liabilities. The audited financial statement shall be  
24 without qualification as to the going concern status of the employee  
25 leasing company.

26 (2) At the time of an application for an initial registration an  
27 employee leasing company shall submit an audited financial  
28 statement prepared within 13 months of the application. Thereafter,  
29 an employee leasing company shall file on an annual basis, within  
30 180 days of the end of the employee leasing company's fiscal year,  
31 a current audited financial statement. An employee leasing  
32 company may request the department for an extension for this  
33 filing, which shall be accompanied by a letter from the employee  
34 leasing company's independent certified public accountant stating  
35 the reasons for the requested extension and the anticipated date of  
36 the completion of the audited financial statement.

37 b. (1) **【As a substitute for the requirement set forth in subsection**  
38 **a. of this section, the commissioner, or his designee, may require**  
39 **that the employee leasing company deposit in a depository**  
40 **designated by the commissioner a bond or securities with a market**  
41 **value of \$75,000.】** An employee leasing company that does not  
42 have a positive working capital may provide to the department, in  
43 lieu thereof, a bond, irrevocable letter of credit, or securities with a  
44 minimum market value equaling the amount necessary to achieve a  
45 positive working capital plus \$100,000. The securities so deposited  
46 shall include authorizations to the commissioner, or his designee, to  
47 sell those securities in an amount sufficient to pay any taxes, wages,

1 benefits or other entitlement due a covered employee, if the  
2 employee leasing company does not make those payments when  
3 due.

4 (2) The commissioner, or his designee, may also require that  
5 bond or deposit if the commissioner finds that the leasing company  
6 has had its license or registration suspended, denied, or limited in  
7 any other jurisdiction; or that there have been instances in which the  
8 employee leasing company has not paid covered employees' wages  
9 or benefits when due, or failed to make timely payment of any  
10 federal or state payroll taxes or unemployment compensation  
11 contributions when due, or for other good cause.

12 (3) Any bond or securities deposited under this subsection shall  
13 not be included for the purpose of the calculation of net worth  
14 required by subsection a. of this section.

15 c. An employee leasing company shall submit to the  
16 commissioner, or his designee, within 60 days after the end of each  
17 calendar quarter, a certification by an independent certified public  
18 accountant that all applicable federal and state payroll taxes for  
19 covered employees in this State have been paid on a timely basis for  
20 that quarter. If the commissioner or his designee does not receive  
21 that certification within the 60-day period, the department shall  
22 notify the employee leasing company within five calendar days of  
23 the expiration of the 60-day period. If that certification is not  
24 received within 10 calendar days following the notification by the  
25 department, the department shall notify the client companies listed  
26 on the employee leasing company's annual report required pursuant  
27 to section 4 of this act that the certification was not received.

28 d. The department shall adopt, pursuant to the "Administrative  
29 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and  
30 regulations to permit, to the extent practicable, employee leasing  
31 companies to electronically file applications, documents, reports  
32 and other filings required by P.L.2001, c.260 (C.34:8-67 et seq.).  
33 (cf: P.L.2001, c.260, s.5)

34  
35 4. (New section) a. Except to the extent otherwise expressly  
36 provided by an applicable employee leasing agreement, a client  
37 company shall be solely responsible for the quality, adequacy or  
38 safety of the goods or services produced or sold in the client  
39 company's business, for directing, supervising, training and  
40 controlling the work of the covered employees with respect to the  
41 business activities of the client company, and for the acts, errors or  
42 omissions of covered employees with regard to those activities.

43 b. Except to the extent otherwise expressly provided by an  
44 applicable employee leasing agreement, a client company shall not  
45 be liable for the acts, errors or omissions of an employee leasing  
46 company, or of any covered employee when the covered employee  
47 is acting under the express direction and control of the employee  
48 leasing company, and an employee leasing company shall not be

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1 liable for the acts, errors, or omissions of a client company or of  
2 any covered employee when the covered employee is acting under  
3 the express direction and control of the client company.

4 c. Except to the extent otherwise expressly provided by an  
5 applicable employee leasing agreement or other employment  
6 contract, insurance contract or bond, a covered employee shall not  
7 be considered, solely as the result of being a covered employee, an  
8 employee of the employee leasing company for purposes of general  
9 liability insurance, fidelity bonds, surety bonds, employer's liability  
10 which is not covered by workers' compensation, or other liability  
11 insurance carried by the employee leasing company.

12  
13 5. (New section) For purposes of determining economic  
14 incentives or benefit based on employment provided by law, rule or  
15 regulation by the State or other government entity, covered  
16 employees of a client company shall be considered employees  
17 solely of the client company, and the client company shall be  
18 entitled to the benefit of any economic incentive or other benefit  
19 based on the number of the client company's covered employees,  
20 notwithstanding that an employee leasing company is the W-2  
21 reporting employer for the covered employees. Each client  
22 company shall be treated as employing only those covered  
23 employees co-employed by the client company, and not covered  
24 employees employed by other client companies of the employee  
25 leasing company. Each employee leasing company shall provide,  
26 upon request by the State or any political subdivision thereof,  
27 employment information reasonably required for the administration  
28 of any economic incentive or benefit program. Each employee  
29 leasing company shall provide, upon request by a client company,  
30 employment information necessary to support any request, claim,  
31 application, or other action by a client company seeking any such  
32 economic incentive or benefit. As used in this section, "covered  
33 employee," "client company," and "employee leasing company"  
34 shall have the same meaning as set forth in section 1 of P.L.2001,  
35 c.260 (C.34:8-67).

36 6. (New section). For the purposes of implementing the "Sales  
37 and Use Tax Act," (P.L.1966, c.30; C.54:32B-1 et seq.) any taxes due  
38 for services performed by covered employees shall be paid by the  
39 client company and not by the employee leasing company. As used in  
40 this section "covered employee," "client company" and "employee  
41 leasing company" shall have the same meaning as set forth in section 1  
42 of P.L.2001, c.260 (C. 34:8-67).

43 7. (New Section) For the purposes of implementing the "Sales and  
44 Use Tax Act," P.L.1966, c.30; C.54:32B-1 et seq.) any sales tax  
45 imposed on employee leasing services provided by an employee  
46 leasing company to a client company shall be imposed only on receipts

1 that reflect the amounts charged to client companies for employee  
2 leasing services and not on receipts that represent the amounts charged  
3 for the payment of wages, salaries, benefits, worker's compensation  
4 costs, withholding taxes, or other assessments paid to or on behalf of a  
5 covered employee by the employee leasing company under an  
6 employee leasing agreement. As used in this section, "employee  
7 leasing company," "client company," "covered employee" and  
8 "employee leasing agreement" shall have the same meaning as set  
9 forth in section 1 of P.L.2001, c.260 (C.34:8-67).

10 8. (New section) For the purposes of implementing any tax  
11 imposed on an employer on a per employee basis, the tax shall be  
12 imposed on a client company for its covered employees and on an  
13 employee leasing company for its employees that are not covered  
14 employees. As used in this section, "employee leasing company,"  
15 "client company," and "covered employee" shall have the same  
16 meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

17 9. (New section) For the purposes of implementing any tax  
18 imposed on an employer on the basis of total payroll, an employee  
19 leasing company, in computing the tax on behalf of the client  
20 company, shall be authorized to apply any small business allowance  
21 or exemption made available pursuant to law to the client company  
22 for covered employees. As used in this section, "employee leasing  
23 company," "client company," and "covered employee" shall have  
24 the same meaning as set forth in section 1 of P.L.2001, c.260  
25 (C.34:8-67).

26  
27 10. (New section) For the purposes of determining any tax credit  
28 based on employment provided by law, rule or regulation by the  
29 State, covered employees of a client company shall be considered  
30 employees solely of the client company, and the client company  
31 shall be entitled to the tax credit based on the number of the client  
32 company's covered employees, notwithstanding that an employee  
33 leasing company is the W-2 reporting employer for the covered  
34 employees. Each client company shall be treated as employing only  
35 those covered employees co-employed by the client company, and  
36 not covered employees employed by other client companies of the  
37 employee leasing company. Each employee leasing company shall  
38 provide, upon request of the Division of Taxation in the Department  
39 of the Treasury, employment information reasonably required for  
40 the administration of any tax credit program. Each employee leasing  
41 company shall provide, upon request by a client company,  
42 employment information necessary to support any request, claim,  
43 application, or other action by a client company seeking any such  
44 tax credit. As used in this section, "employee leasing company,"  
45 "client company," and "covered employee" shall have the same  
46 meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

1 11. This act shall take effect nine months following enactment.

2

3

STATEMENT

4 This bill makes various changes to several laws that affect the  
5 regulation and business operations of employee leasing companies,  
6 or professional employer organizations (PEOs). Employee leasing  
7 companies are business entities that manage human resources,  
8 employee benefits, health insurance, and payroll and workers'  
9 compensation for small businesses. Companies contract with an  
10 employee leasing company to assist them with employee related  
11 matters such as health benefits, workers' compensation claims,  
12 payroll, payroll tax compliance, and unemployment insurance  
13 claims, allowing the client companies to concentrate on the  
14 operational aspects of their businesses. Employee leasing  
15 companies are not temporary employment agencies; employee  
16 leasing companies become "co-employers" of the employees of the  
17 businesses to which they provide services. Employee leasing  
18 companies are regulated by the Department of Labor and Workforce  
19 Development pursuant to P.L.2001, c.260 (34:8-67 et seq.).

20 Specifically this bill amends the New Jersey employee leasing  
21 company statute to:

22 1. Establish a limited registration process for employee leasing  
23 companies domiciled and licensed in another state and with fewer  
24 than 50 employees in this State;

25 2. Change the financial test for registration of employee  
26 leasing companies by the department from a set minimum worth to  
27 positive working capital, require employee leasing companies to  
28 submit audited, rather than reviewed, financial statements, and  
29 require employee leasing companies that cannot demonstrate a  
30 positive working capital to post a bond equal to the amount needed  
31 to achieve a positive working capital plus \$100,000.

32 3. Direct the department to authorize, to the extent practicable,  
33 electronic filing of documents and other compliance documents;

34 4. Clarify various responsibilities, rights and liabilities of  
35 employee leasing companies, client companies, and covered  
36 employees under an employee leasing agreement;

37 5. Clarify that an employee leasing agreement is not affect  
38 certain rights of covered employees, or affect any contractual  
39 relationship between a client company and a covered employee;

40 6. Clarify that an employee leasing company is not required to  
41 obtain professional licenses or State permits required of a client  
42 company solely by virtue of an employee leasing agreement;

43 7. Require that an employee leasing company submit a fee of  
44 \$500 with every initial application and subsequent annual reporting;  
45 and

46 8. Provide that a client company, not an employee leasing  
47 company, is responsible for workplace safety issues and policies.



**S2164 SWEENEY**

11

1 This bill also supplements the “Sales and Use Tax Act,”  
2 P.L.1966, c.32 (C.54:32B-1 et seq.) to clarify and allocate the tax  
3 liabilities of client companies and employee leasing companies if  
4 the tax were to be applied to services provided by client companies  
5 or to services provided by employee leasing companies. Also, this  
6 bill similarly clarifies and allocates tax liabilities of a per-employee  
7 tax or payroll tax imposed on a client company or an employee  
8 leasing company. Lastly, this bill clarifies that a tax credit or  
9 economic benefit or incentive available to employers accrues to a  
10 client company employer with an agreement with an employee  
11 leasing company.

# SENATE LABOR COMMITTEE

## STATEMENT TO

### **SENATE, No. 2164**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JULY 19, 2010

The Senate Labor Committee reports favorably Senate Bill No. 2164 with committee amendments.

As amended, this bill makes various changes to several laws that affect the regulation and business operations of employee leasing companies, or professional employer organizations (PEOs). Employee leasing companies are business entities that manage human resources, employee benefits, health insurance, payroll and workers' compensation for small businesses. Companies contract with an employee leasing company to assist them with employee related matters such as health benefits, workers' compensation claims, payroll, payroll tax compliance, and unemployment insurance claims, allowing the client companies to concentrate on the operational aspects of their businesses. Employee leasing companies are not temporary employment agencies; employee leasing companies become "co-employers" of the employees of the businesses to which they provide services. Employee leasing companies are regulated by the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (34:8-67 et seq.).

Specifically this bill amends the New Jersey employee leasing company statute to:

1. Establish a limited registration process for employee leasing companies domiciled and licensed in another state and with fewer than 50 employees in this State;
2. Change the financial test for registration of employee leasing companies by the department from a set minimum worth to positive working capital; require employee leasing companies to submit audited, rather than reviewed, financial statements; and require employee leasing companies that cannot demonstrate a positive working capital to post a bond equal to the amount needed to achieve a positive working capital plus \$100,000.
3. Direct the department to authorize, to the extent practicable, electronic filing of documents and other compliance documents;

4. Clarify various responsibilities, rights and liabilities of employee leasing companies, client companies, and covered employees under an employee leasing agreement;

5. Clarify that an employee leasing agreement does not affect certain rights of covered employees, or affect any contractual relationship between a client company and a covered employee;

6. Clarify that an employee leasing company is not required to obtain professional licenses or State permits required of a client company solely by virtue of an employee leasing agreement;

7. Require that an employee leasing company submit a fee of \$500 with every initial application and subsequent annual reporting; and

8. Provide that a client company, not an employee leasing company, is responsible for workplace safety issues and policies.

This bill also supplements the "Sales and Use Tax Act," P.L.1966, c.32 (C.54:32B-1 et seq.) to clarify and allocate the tax liabilities of client companies and employee leasing companies. Also, this bill similarly clarifies and allocates tax liabilities of a per-employee tax or payroll tax imposed on a client company or an employee leasing company. Lastly, this bill clarifies that a tax credit or economic benefit or incentive available to employers accrues to a client company with an agreement with an employee leasing company.

#### COMMITTEE AMENDMENTS

The committee amendments:

1. Clarify that a client company that is party to an employee leasing agreement is required to abide by an applicable collective bargaining agreement during the term of the agreement as well as upon the agreement's expiration;

2. Clarify that the out-of-State employee leasing companies which are permitted to use the limited registration process established by the bill are exempt from the bill's working capital requirements, but not exempt from the law's requirement to register; and

3. Clarify that certain bonds and securities are excluded from calculations of the positive working capital needed for registration as an employee leasing company.

STATEMENT TO  
[First Reprint]  
**SENATE, No. 2164**

with Senate Floor Amendments  
(Proposed by Senator SWEENEY)

ADOPTED: NOVEMBER 22, 2010

These Senate amendments:

1. Change the requirement that an employee leasing company report changes in its standard form of agreement from “material” changes to “substantive” changes;

2. Provide a renewal process for the “limited registration” the bill provides for out-of-State employee leasing companies responsible for not more than 50 covered employees working in the State and specifies that the 50 employee threshold is applied on the date of registration or renewal, rather than “on any single day”, but requires that if the 50 employee threshold is later exceeded, the company would be required to re-register, but without additional fee;

3. Permit any two or more employee leasing companies which are majority owned by the same ultimate parent company to meet their registration and reporting responsibilities on a combined or consolidated basis, but requires each company to pay the \$500 registration fee;

4. Change, in the case of an employee leasing company which does not have a positive working capital, the amount of the bond, letter of credit or securities which the company must provide from the amount needed to achieve a positive working capital plus \$100,000 to the amount needed to achieve a positive working capital plus an amount determined by the Commissioner of Labor and Workforce Development of up to \$100,000;

5. Permit the commissioner to approve “assurance organizations,” which would certify the qualifications of employee leasing companies and represent the companies before the commissioner with respect to registration, reporting, and paying fees, including by electronic means, in a manner which is or is not consistent with existing requirements, at the discretion of the commissioner.

6. Change the number of days which the commissioner is provided to notify an employee leasing company of its failure to provide required certification of payroll taxes from five calendar days to five business days, and the number of days which the commissioner is provided to notify the company’s client companies of the failure from 10 calendar days to 10 business days; and

7. Change the effective date of the bill from nine to 12 months after enactment.

# ASSEMBLY REGULATED PROFESSIONS COMMITTEE

## STATEMENT TO

[Second Reprint]

## **SENATE, No. 2164**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 13, 2011

The Assembly Regulated Professions Committee reports favorably and with committee amendments Senate Bill No. 2164 (2R).

As amended, this bill makes various changes to several laws that affect the regulation and business operations of employee leasing companies, or professional employer organizations (PEOs). Employee leasing companies are business entities that manage human resources, employee benefits, health insurance, and payroll and workers' compensation for small businesses. Companies contract with an employee leasing company to assist them with employee related matters such as health benefits, workers' compensation claims, payroll, payroll tax compliance, and unemployment insurance claims, allowing the client companies to concentrate on the operational aspects of their businesses. Employee leasing companies are not temporary employment agencies; employee leasing companies become "co-employers" of the employees of the businesses to which they provide services. Employee leasing companies are regulated by the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (34:8-67 et seq.).

Specifically this bill amends the New Jersey employee leasing company statute to:

1. Establish a limited registration process for employee leasing companies domiciled and licensed in another state and with 50 or fewer employees in this State;
2. Change the financial test for registration of employee leasing companies by the department from a set minimum worth to positive working capital, require employee leasing companies to submit financial statements prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant, and require employee leasing companies that cannot demonstrate a positive working capital to post a bond equal to the amount needed to achieve a positive working capital plus up to \$100,000.

3. Direct the department to authorize, to the extent authorized by the “Uniform Electronic Transactions Act,” P.L.2001, c.116 (C.12A:12-1 et seq.), electronic filing of documents and other compliance documents;

4. Clarify various responsibilities, rights and liabilities of employee leasing companies, client companies, and covered employees under an employee leasing agreement;

5. Clarify that an employee leasing agreement does not affect certain rights of covered employees, or affect any contractual relationship between a client company and a covered employee;

6. Clarify that an employee leasing company is not required to obtain professional licenses or State permits required of a client company solely by virtue of an employee leasing agreement;

7. Permit the department to charge a fee of up to \$500 with every initial application and subsequent annual reporting; and

8. Provide that a client company, not an employee leasing company, is responsible for workplace safety issues and policies.

This bill also supplements the “Sales and Use Tax Act,” P.L.1966, c.32 (C.54:32B-1 et seq.) to clarify and allocate the tax liabilities of client companies and employee leasing companies if the tax were to be applied prospectively to services provided by client companies or to services provided by employee leasing companies. Also, this bill similarly clarifies and allocates tax liabilities of a per-employee tax or payroll tax imposed on a client company or an employee leasing company. Lastly, this bill clarifies that a tax credit or economic benefit or incentive available to employers accrues to a client company employer with an agreement with an employee leasing company.

Committee Amendments:

The committee amended the bill to:

1) Clarify that employee leasing companies are required to provide workers’ compensation insurance for covered employees through policies that state the name of the employee leasing company as the contractor for each client company by name;

2) Provide that an employee leasing company and a client company would be jointly responsible for control over employee risk safety at work sites and management of workers’ compensation claims;

3) Provide that for purposes of an employee leasing agreement any criminal background check required of an employee would be the joint responsibility of the client company and the employee leasing company;

4) Provide that an employee leasing company would be required to notify the Department of Labor and Workforce Development of any material, as opposed to substantive, change in an employee leasing agreement;

5) Provide that an employee leasing company registering with the department under a limited registration would be required to notify the

department within 30 days of the end of the quarter in which the employee leasing company became responsible for more than 50 employees ( which would subject it to a full registration requirement);

6) Provide that any employee leasing company group must demonstrate positive working capital, and would not be eligible to provide a bond or other security as a substitute ;

7) Provide that the Department of Labor and Workforce Development may impose a registration fee of up to \$500, but is not required to do so;

8) Provide that if the department allows the use of an assurance organization to interact with the department on an employee leasing company's behalf, the department would not be required to approve or qualify the assurance organization;

9) Clarify that the section of the bill relating to a prospective imposition of the sales tax on employee leasing companies would apply to the imposition of the sales tax only pursuant to a law enacted after the effective date of this bill; and

10) Make technical amendments.

As amended by the committee, this bill is identical to Assembly Bill No. 3408 (1R), which was also reported favorably by the committee today.

# ASSEMBLY, No. 3408

## STATE OF NEW JERSEY

### 214th LEGISLATURE

INTRODUCED OCTOBER 18, 2010

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**  
**District 3 (Salem, Cumberland and Gloucester)**  
**Assemblyman VINCENT PRIETO**  
**District 32 (Bergen and Hudson)**  
**Assemblyman PATRICK J. DIEGNAN, JR.**  
**District 18 (Middlesex)**

**SYNOPSIS**

Concerns employee leasing companies.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 2/18/2011)



1 AN ACT concerning employee leasing companies, amending and  
2 supplementing P.L.2001, c.260, and supplementing various parts  
3 of the statutory law.

4

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

7

8 1. Section 2 of P.L.2001, c.260 (C.34:8-68) is amended to read  
9 as follows:

10 2. a. Every employee leasing agreement shall provide that the  
11 employee leasing company:

12 (1) Reserves a right of direction and control over each covered  
13 employee assigned to the client company's location. However, a  
14 client company may retain sufficient direction and control over the  
15 covered employee as is necessary to conduct the client company's  
16 business and without which the client company would be unable to  
17 conduct its business, discharge any fiduciary responsibility that it  
18 may have, or comply with any applicable licensure, regulatory or  
19 statutory requirement of the client company;

20 (2) Assumes responsibility for the payment of wages to each  
21 covered employee without regard to payments by the client  
22 company to the employee leasing company, except that the  
23 provisions of this paragraph shall not affect the client company's  
24 obligations with respect to the payment of wages to covered  
25 employees;

26 (3) Assumes responsibility for the payment of payroll taxes and  
27 collection of taxes from payroll on each covered employee;

28 (4) Retains authority to hire, terminate, discipline, and reassign  
29 each covered employee. However, no covered employee shall be  
30 reassigned to another client company without that covered  
31 employee's consent and the client company may have the right to  
32 accept or cancel the assignment of any covered employee;

33 (5) Has given written notice of the relationship between the  
34 employee leasing company and the client company to each covered  
35 employee it assigns to perform services at the client company's  
36 work site;

37 (6) Shall, except for newly established business entities, hire its  
38 initial employee complement from among employees of the client  
39 company at the time of execution of the employee leasing  
40 agreement at comparable terms and conditions of employment as  
41 are in existence at the client company at the time of execution of the  
42 employee leasing agreement and as designated by the client  
43 company. Throughout the term of the employee leasing agreement  
44 the covered employees shall be considered employees of the

**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 employee leasing company and the client company and upon the  
2 termination of the employee leasing agreement, the covered  
3 employees shall be considered employees of the client company;

4 (7) Continue to honor and abide by existing collective  
5 bargaining agreements applicable to covered employees. [Upon  
6 expiration of the employee leasing agreement, the] The client  
7 company shall also continue to honor and abide by all collective  
8 bargaining agreements applicable to covered employees. Every  
9 employee leasing company which enters into a contract with a client  
10 company, which has a collective bargaining representative for the  
11 covered employees, shall require that client company to enter into  
12 an agreement with the employee leasing company containing the  
13 following language:

14 "The client company shall continue to honor and abide by the  
15 terms of any applicable collective bargaining agreements, and upon  
16 expiration thereof, any obligations of the client company to bargain  
17 in good faith in connection with such collective bargaining  
18 agreements shall not be affected in any manner by the employee  
19 leasing agreement."

20 b. Every employee leasing agreement shall provide that [the  
21 employee leasing company and] the client company shall [each]  
22 retain a right of direction and control over management of safety,  
23 risk and hazard control at the work site or sites affecting each  
24 covered employee including:

25 (1) Responsibility for performing safety inspections of client  
26 company equipment and premises; and

27 (2) Responsibility for the promulgation and administration of  
28 employment and safety policies[; and].

29 [(3) Responsibility] The employee leasing company shall be  
30 responsible for the management of workers' compensation claims,  
31 the filings thereof, and procedures related thereto.

32 c. Nothing in this section or this act shall alter the rights or  
33 obligations of client companies, employee leasing companies or  
34 covered employees under the National Labor Relations Act, 29  
35 U.S.C. s.151 et seq.

36 d. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any  
37 employee leasing agreement shall diminish, abolish or remove any  
38 obligations of covered employees to a client company or any  
39 obligations of any client company to a covered employee existing  
40 prior to the effective date of an employee leasing agreement, or  
41 create any new or additional enforceable right of a covered  
42 employee against an employee leasing company that is not  
43 specifically provided by the appropriate employee leasing  
44 agreement P.L.2001, c.260 (C.34:8-67 et seq.).

45 (2) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any  
46 employee leasing agreement shall affect, modify, or amend any  
47 contractual relationship or restrictive covenant between a covered

1 employee and any client company in effect at the time an employee  
2 leasing agreement becomes effective; nor shall it prohibit or amend  
3 any contractual relationship or restrictive covenant that is entered  
4 into subsequently between a client company and a covered  
5 employee. An employee leasing company shall have no  
6 responsibility or liability in connection with, or arising out of, any  
7 such existing or new contractual relationship or restrictive covenant  
8 unless the employee leasing company has specifically agreed  
9 otherwise in writing.

10 e. (1) Nothing in P.L.2001, c.260 (C.34:8-67 et seq.) or in any  
11 employee leasing agreement shall affect, modify or amend any state  
12 or local registration or certification requirement applicable to any  
13 client company or covered employee.

14 (2) A covered employee who is required to be licensed,  
15 registered, or certified or undergo a criminal background check  
16 pursuant to any State law or regulation shall be considered solely an  
17 employee of the client company for purposes of that license,  
18 registration, or certification requirement.

19 (3) An employee leasing company shall not be deemed to  
20 engage in any occupation, trade, profession, or other activity that is  
21 subject to licensing, registration, or certification requirements, or is  
22 otherwise regulated by a governmental entity, solely by entering  
23 into an employee leasing agreement with a client company who is  
24 subject to those requirements or regulation.

25 (4) A client company shall have the sole right of direction and  
26 control of the professional or licensed activities of covered  
27 employees and the client company's business. Those covered  
28 employees and client companies shall remain subject to regulation  
29 by the regulatory or governmental entity responsible for licensing,  
30 registration, or certification of those covered employees or client  
31 companies.

32 f. A client company's certification as a small, minority-owned,  
33 disadvantaged, woman-owned business enterprise or a historically  
34 underutilized business for the purposes of any bid, contract,  
35 purchase order, or agreement entered into with the State or a  
36 political subdivision of the State, shall not be affected because the  
37 client company has entered into an employee leasing agreement  
38 with an employee leasing company.

39 g. Any benefit that a client company is required to provide to  
40 covered employees that is provided to covered employees by an  
41 employee leasing company through an employee leasing agreement  
42 shall be credited against the client company's obligation to fulfill  
43 the requirement.

44 (cf: P.L.2001, c.260, s.2)

45

46 2. Section 4 of P.L.2001, c.260 (C.34:8-70) is amended to read  
47 as follows:

1       4. a. An employee leasing company shall register with the  
2 commissioner and provide a list of its client companies with  
3 covered employees in this State, both upon the initial registration of  
4 the employee leasing company, and thereafter, annually by January  
5 31st, listing all client companies as of the immediately proceeding  
6 December 31st. The list shall include the following information  
7 with regard to each client company:

- 8       (1) Client company's name;
- 9       (2) Client company's physical location address;
- 10      (3) Description of client company's economic activity;
- 11      (4) Client company's state tax identification number;
- 12      (5) Percent of client company's workforce being leased;
- 13      (6) Effective date and duration of employee leasing agreement;
- 14      (7) A copy of the standard form of agreement entered into  
15 between the employee leasing company and the client company;

16      (a) The standard form of agreement shall be accompanied by a  
17 certified list of all client companies with covered employees in this  
18 State contracting with the employee leasing company for its  
19 services.

20      (b) The employee leasing company shall be required to notify  
21 the Department of Labor and Workforce Development on an annual  
22 basis of any material changes in the standard form of agreement  
23 which relate to the requirements set forth in section 2 of this act,  
24 and when any particular client company has agreed to terms which  
25 deviate from the standard form of agreement;

26      (8) Proof of written disclosure to client companies upon the  
27 signing of an employee leasing agreement, as required in section 8  
28 of this act;

29      (9) Proof of current workers' compensation coverage, which  
30 may be in the form of a letter from the insurance carrier, and which  
31 shall include the name of the carrier, date of commencement of  
32 coverage under the policy, term of the coverage, and verification of  
33 premiums paid; and

34      (10) Confirmation that all leased employees are covered by  
35 workers' compensation insurance.

36       b. Employee leasing companies shall also report to the  
37 department, on a quarterly basis, wage information regarding each  
38 covered employee as required by law, rule or regulation.

39       c. All records, reports and other information obtained from  
40 employee leasing companies under this act, except to the extent  
41 necessary for the proper administration by the department of this act  
42 and all applicable labor laws, shall be confidential and shall not be  
43 published or open to public inspection other than to public  
44 employees in the performance of their public duties.

45       d. The department shall establish a limited registration process  
46 and appropriate forms for an employee leasing company that (1) is  
47 not domiciled in this State; (2) is licensed or registered as an  
48 employee leasing company or professional employer organization in

1 another state; (3) does not maintain an office in this State or directly  
2 solicit client companies located or domiciled in this State; and (4) is  
3 not on any single day responsible for more than 50 covered  
4 employees employed in this State. An employee leasing company  
5 requesting a limited registration pursuant to this subsection shall  
6 provide the department with a list of client companies and the  
7 number of covered employees at each of those companies and such  
8 other minimal information as the department shall prescribe. Any  
9 employee leasing company receiving a limited registration from the  
10 department shall not be required to comply with the provisions of  
11 subsection a. and b. of [this] section 5 of P.L.2001, c.260 (C.34:8-  
12 71).

13 e. Every initial application and subsequent annual reporting  
14 submitted pursuant to this section shall be accompanied by a fee of  
15 \$500.

16 (cf: P.L.2001, c.260, s.4)

17

18 3. Section 5 of P.L.2001, c.260 (C.34:8-71) is amended to read  
19 as follows:

20 5. a. (1) Every initial registration and subsequent annual  
21 reporting shall be accompanied by **[a reviewed]** an audited  
22 financial statement prepared by an independent certified public  
23 accountant in accordance with generally accepted accounting  
24 principles **[within six months prior to the date of application or**  
25 renewal], which statement shall show a **[minimum net worth of**  
26 \$100,000] positive working capital, computed as current assets  
27 minus current liabilities. The audited financial statement shall be  
28 without qualification as to the going concern status of the employee  
29 leasing company.

30 (2) At the time of an application for an initial registration an  
31 employee leasing company shall submit an audited financial  
32 statement prepared within 13 months of the application. Thereafter,  
33 an employee leasing company shall file on an annual basis, within  
34 180 days of the end of the employee leasing company's fiscal year,  
35 a current audited financial statement. An employee leasing  
36 company may request the department for an extension for this  
37 filing, which shall be accompanied by a letter from the employee  
38 leasing company's independent certified public accountant stating  
39 the reasons for the requested extension and the anticipated date of  
40 the completion of the audited financial statement.

41 b. (1) **[As a substitute for the requirement set forth in**  
42 subsection a. of this section, the commissioner, or his designee, may  
43 require that the employee leasing company deposit in a depository  
44 designated by the commissioner a bond or securities with a market  
45 value of \$75,000.] An employee leasing company that does not  
46 have a positive working capital may provide to the department, in  
47 lieu thereof, a bond, irrevocable letter of credit, or securities with a

1 minimum market value equaling the amount necessary to achieve a  
2 positive working capital plus \$100,000. The securities so deposited  
3 shall include authorizations to the commissioner, or his designee, to  
4 sell those securities in an amount sufficient to pay any taxes, wages,  
5 benefits or other entitlement due a covered employee, if the  
6 employee leasing company does not make those payments when  
7 due.

8 (2) The commissioner, or his designee, may also require that  
9 bond or deposit if the commissioner finds that the leasing company  
10 has had its license or registration suspended, denied, or limited in  
11 any other jurisdiction; or that there have been instances in which the  
12 employee leasing company has not paid covered employees' wages  
13 or benefits when due, or failed to make timely payment of any  
14 federal or state payroll taxes or unemployment compensation  
15 contributions when due, or for other good cause.

16 (3) Any bond or securities deposited under this subsection shall  
17 not be included for the purpose of the calculation of **[net worth]**  
18 positive working capital required by subsection a. of this section.

19 c. An employee leasing company shall submit to the  
20 commissioner, or his designee, within 60 days after the end of each  
21 calendar quarter, a certification by an independent certified public  
22 accountant that all applicable federal and state payroll taxes for  
23 covered employees in this State have been paid on a timely basis for  
24 that quarter. If the commissioner or his designee does not receive  
25 that certification within the 60-day period, the department shall  
26 notify the employee leasing company within five calendar days of  
27 the expiration of the 60-day period. If that certification is not  
28 received within 10 calendar days following the notification by the  
29 department, the department shall notify the client companies listed  
30 on the employee leasing company's annual report required pursuant  
31 to section 4 of this act that the certification was not received.

32 d. The department shall adopt, pursuant to the "Administrative  
33 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) rules and  
34 regulations to permit, to the extent practicable, employee leasing  
35 companies to electronically file applications, documents, reports  
36 and other filings required by P.L.2001, c.260 (C.34:8-67 et seq.).

37 (cf: P.L.2001, c.260, s.5)

38

39 4. (New section) a. Except to the extent otherwise expressly  
40 provided by an applicable employee leasing agreement, a client  
41 company shall be solely responsible for the quality, adequacy or  
42 safety of the goods or services produced or sold in the client  
43 company's business, for directing, supervising, training and  
44 controlling the work of the covered employees with respect to the  
45 business activities of the client company, and for the acts, errors or  
46 omissions of covered employees with regard to those activities.

47 b. Except to the extent otherwise expressly provided by an  
48 applicable employee leasing agreement, a client company shall not

1 be liable for the acts, errors or omissions of an employee leasing  
2 company, or of any covered employee when the covered employee  
3 is acting under the express direction and control of the employee  
4 leasing company, and an employee leasing company shall not be  
5 liable for the acts, errors, or omissions of a client company or of  
6 any covered employee when the covered employee is acting under  
7 the express direction and control of the client company.

8 c. Except to the extent otherwise expressly provided by an  
9 applicable employee leasing agreement or other employment  
10 contract, insurance contract or bond, a covered employee shall not  
11 be considered, solely as the result of being a covered employee, an  
12 employee of the employee leasing company for purposes of general  
13 liability insurance, fidelity bonds, surety bonds, employer's liability  
14 which is not covered by workers' compensation, or other liability  
15 insurance carried by the employee leasing company.

16  
17 5. (New section) For purposes of determining economic  
18 incentives or benefit based on employment provided by law, rule or  
19 regulation by the State or other government entity, covered  
20 employees of a client company shall be considered employees  
21 solely of the client company, and the client company shall be  
22 entitled to the benefit of any economic incentive or other benefit  
23 based on the number of the client company's covered employees,  
24 notwithstanding that an employee leasing company is the W-2  
25 reporting employer for the covered employees. Each client  
26 company shall be treated as employing only those covered  
27 employees co-employed by the client company, and not covered  
28 employees employed by other client companies of the employee  
29 leasing company. Each employee leasing company shall provide,  
30 upon request by the State or any political subdivision thereof,  
31 employment information reasonably required for the administration  
32 of any economic incentive or benefit program. Each employee  
33 leasing company shall provide, upon request by a client company,  
34 employment information necessary to support any request, claim,  
35 application, or other action by a client company seeking any such  
36 economic incentive or benefit. As used in this section, "covered  
37 employee," "client company," and "employee leasing company"  
38 shall have the same meaning as set forth in section 1 of P.L.2001,  
39 c.260 (c.34:8-67).

40  
41 6. (New section) For the purposes of implementing the "Sales  
42 and Use Tax Act," (P.L.1966, c.30; C.54:32B-1 et seq.) any taxes  
43 due for services performed by covered employees shall be paid by  
44 the client company and not by the employee leasing company. As  
45 used in this section "covered employee," "client company" and  
46 "employee leasing company" shall have the same meaning as set  
47 forth in section 1 of P.L.2001, c.260 (C. 34:8-67).

1           7. (New section) For the purposes of implementing the “Sales  
2 and Use Tax Act,” P.L.1966, c.30; C.54:32B-1 et seq.) any sales tax  
3 imposed on employee leasing services provided by an employee  
4 leasing company to a client company shall be imposed only on receipts  
5 that reflect the amounts charged to client companies for employee  
6 leasing services and not on receipts that represent the amounts charged  
7 for the payment of wages, salaries, benefits, worker’s compensation  
8 costs, withholding taxes, or other assessments paid to or on behalf of a  
9 covered employee by the employee leasing company under an  
10 employee leasing agreement. As used in this section, “employee  
11 leasing company,” “client company,” “covered employee” and  
12 “employee leasing agreement” shall have the same meaning as set  
13 forth in section 1 of P.L.2001, c.260 (C.34:8-67).

14           8. (New section) For the purposes of implementing any tax  
15 imposed on an employer on a per employee basis, the tax shall be  
16 imposed on a client company for its covered employees and on an  
17 employee leasing company for its employees that are not covered  
18 employees. As used in this section, “employee leasing company,”  
19 “client company,” and “covered employee” shall have the same  
20 meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

21           9. (New section) For the purposes of implementing any tax  
22 imposed on an employer on the basis of total payroll, an employee  
23 leasing company, in computing the tax on behalf of the client  
24 company, shall be authorized to apply any small business allowance  
25 or exemption made available pursuant to law to the client company  
26 for covered employees. As used in this section, “employee leasing  
27 company,” “client company,” and “covered employee” shall have  
28 the same meaning as set forth in section 1 of P.L.2001, c.260  
29 (C.34:8-67).

30  
31           10. (New section) For the purposes of determining any tax credit  
32 based on employment provided by law, rule or regulation by the  
33 State, covered employees of a client company shall be considered  
34 employees solely of the client company, and the client company  
35 shall be entitled to the tax credit based on the number of the client  
36 company’s covered employees, notwithstanding that an employee  
37 leasing company is the W-2 reporting employer for the covered  
38 employees. Each client company shall be treated as employing only  
39 those covered employees co-employed by the client company, and  
40 not covered employees employed by other client companies of the  
41 employee leasing company. Each employee leasing company shall  
42 provide, upon request of the Division of Taxation in the Department  
43 of the Treasury, employment information reasonably required for  
44 the administration of any tax credit program. Each employee leasing  
45 company shall provide, upon request by a client company,  
46 employment information necessary to support any request, claim,



1 application, or other action by a client company seeking any such  
2 tax credit. As used in this section, “employee leasing company,”  
3 “client company,” and “covered employee” shall have the same  
4 meaning as set forth in section 1 of P.L.2001, c.260 (C.34:8-67).

5  
6 11. This act shall take effect nine months following enactment.

7  
8  
9 STATEMENT

10 This bill makes various changes to several laws that affect the  
11 regulation and business operations of employee leasing companies,  
12 or professional employer organizations (PEOs). Employee leasing  
13 companies are business entities that manage human resources,  
14 employee benefits, health insurance, and payroll and workers'  
15 compensation for small businesses. Companies contract with an  
16 employee leasing company to assist them with employee related  
17 matters such as health benefits, workers' compensation claims,  
18 payroll, payroll tax compliance, and unemployment insurance  
19 claims, allowing the client companies to concentrate on the  
20 operational aspects of their businesses. Employee leasing  
21 companies are not temporary employment agencies; employee  
22 leasing companies become “co-employers” of the employees of the  
23 businesses to which they provide services. Employee leasing  
24 companies are regulated by the Department of Labor and Workforce  
25 Development pursuant to P.L.2001, c.260 (34:8-67 et seq.).

26 Specifically this bill amends the New Jersey employee leasing  
27 company statute to:

28 1. Establish a limited registration process for employee leasing  
29 companies domiciled and licensed in another state and with fewer  
30 than 50 employees in this State;

31 2. Change the financial test for registration of employee  
32 leasing companies by the department from a set minimum worth to  
33 positive working capital, require employee leasing companies to  
34 submit audited, rather than reviewed, financial statements, and  
35 require employee leasing companies that cannot demonstrate a  
36 positive working capital to post a bond equal to the amount needed  
37 to achieve a positive working capital plus \$100,000.

38 3. Direct the department to authorize, to the extent practicable,  
39 electronic filing of documents and other compliance documents;

40 4. Clarify various responsibilities, rights and liabilities of  
41 employee leasing companies, client companies, and covered  
42 employees under an employee leasing agreement;

43 5. Clarify that an employee leasing agreement is not affect  
44 certain rights of covered employees, or affect any contractual  
45 relationship between a client company and a covered employee;

- 1       6. Clarify that an employee leasing company is not required to
- 2 obtain professional licenses or State permits required of a client
- 3 company solely by virtue of an employee leasing agreement;
- 4       7. Require that an employee leasing company submit a fee of
- 5 \$500 with every initial application and subsequent annual reporting;
- 6       8. Provide that a client company, not an employee leasing
- 7 company, is responsible for workplace safety issues and policies;
- 8       9. Provide that a client company that is party to an employee
- 9 leasing agreement is required to abide by an applicable collective
- 10 bargaining agreement during the term of the agreement as well as
- 11 upon the agreement's expiration;
- 12       10. Provide that the out-of-State employee leasing companies
- 13 which are permitted to use the limited registration process
- 14 established by the bill are exempt from the bill's working capital
- 15 requirements, but not exempt from the law's requirement to
- 16 register; and
- 17       11. Provide that certain bonds and securities are excluded from
- 18 calculations of the positive working capital needed for registration
- 19 as an employee leasing company.
- 20       This bill also supplements the "Sales and Use Tax Act,"
- 21 P.L.1966, c.32 (C.54:32B-1 et seq.) to clarify and allocate the tax
- 22 liabilities of client companies and employee leasing companies if
- 23 the tax were to be applied to services provided by client companies
- 24 or to services provided by employee leasing companies. Also, this
- 25 bill similarly clarifies and allocates tax liabilities of a per-employee
- 26 tax or payroll tax imposed on a client company or an employee
- 27 leasing company. Lastly, this bill clarifies that a tax credit or
- 28 economic benefit or incentive available to employers accrues to a
- 29 client company employer with an agreement with an employee
- 30 leasing company.

# ASSEMBLY REGULATED PROFESSIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3408

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 13, 2011

The Assembly Regulated Professions Committee reports favorably and with committee amendments Assembly Bill No. 3408.

As amended, this bill makes various changes to several laws that affect the regulation and business operations of employee leasing companies, or professional employer organizations (PEOs). Employee leasing companies are business entities that manage human resources, employee benefits, health insurance, and payroll and workers' compensation for small businesses. Companies contract with an employee leasing company to assist them with employee related matters such as health benefits, workers' compensation claims, payroll, payroll tax compliance, and unemployment insurance claims, allowing the client companies to concentrate on the operational aspects of their businesses. Employee leasing companies are not temporary employment agencies; employee leasing companies become "co-employers" of the employees of the businesses to which they provide services. Employee leasing companies are regulated by the Department of Labor and Workforce Development pursuant to P.L.2001, c.260 (34:8-67 et seq.).

Specifically this bill amends the New Jersey employee leasing company statute to:

1. Establish a limited registration process for employee leasing companies domiciled and licensed in another state and with 50 or fewer employees in this State;
2. Change the financial test for registration of employee leasing companies by the department from a set minimum worth to positive working capital, require employee leasing companies to submit financial statements prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant, and require employee leasing companies that cannot demonstrate a positive working capital to post a bond equal to the amount needed to achieve a positive working capital plus up to \$100,000.
3. Direct the department to authorize, to the extent authorized by the "Uniform Electronic Transactions Act," P.L.2001, c.116

(C.12A:12-1 et seq.), electronic filing of documents and other compliance documents;

4. Clarify various responsibilities, rights and liabilities of employee leasing companies, client companies, and covered employees under an employee leasing agreement;

5. Clarify that an employee leasing agreement does not affect certain rights of covered employees, or affect any contractual relationship between a client company and a covered employee;

6. Clarify that an employee leasing company is not required to obtain professional licenses or State permits required of a client company solely by virtue of an employee leasing agreement;

7. Permit the department to charge a fee of up to \$500 with every initial application and subsequent annual reporting; and

8. Provide that a client company, not an employee leasing company, is responsible for workplace safety issues and policies.

This bill also supplements the “Sales and Use Tax Act,” P.L.1966, c.32 (C.54:32B-1 et seq.) to clarify and allocate the tax liabilities of client companies and employee leasing companies if the tax were to be applied prospectively to services provided by client companies or to services provided by employee leasing companies. Also, this bill similarly clarifies and allocates tax liabilities of a per-employee tax or payroll tax imposed on a client company or an employee leasing company. Lastly, this bill clarifies that a tax credit or economic benefit or incentive available to employers accrues to a client company employer with an agreement with an employee leasing company.

Committee Amendments:

The committee amended the bill to:

1. Provide a renewal process for the “limited registration” the bill provides for out-of-State employee leasing companies responsible for not more than 50 covered employees working in the State and specifies that the 50 employee threshold is applied on the date of registration or renewal, rather than “on any single day”, but requires that if the 50 employee threshold is later exceeded, the company would be required to re-register, but without additional fee;

2. Permit any two or more employee leasing companies which are majority owned by the same ultimate parent company to meet their registration and reporting responsibilities on a combined or consolidated basis, but requires each company to pay any additional registration fee, if a fee is required;

3. Change, in the case of an employee leasing company which does not have a positive working capital, the amount of the bond, letter of credit or securities which the company must provide from the amount needed to achieve a positive working capital plus an amount determined by the Commissioner of Labor and Workforce Development of up to \$100,000;

4. Permit the commissioner to approve “assurance organizations,”

which would certify the qualifications of employee leasing companies and represent the companies before the commissioner with respect to registration, reporting, and paying fees, including by electronic means, in a manner which is or is not consistent with existing requirements, at the discretion of the commissioner.

5. Change the number of days which the commissioner is provided to notify an employee leasing company of its failure to provide required certification of payroll taxes from five calendar days to five business days, and the number of days which the commissioner is provided to notify the company's client companies of the failure from 10 calendar days to 10 business days;

6. Clarify that employee leasing companies are required to provide workers' compensation insurance for covered employees through policies that state the name of the employee leasing company as the contractor for each client company by name;

7. Provide that an employee leasing company and a client company would be jointly responsible for control over employee risk safety at work sites and management of workers' compensation claims;

8. Provide that for purposes of an employee leasing agreement any criminal background check required of an employee would be the joint responsibility of the client company and the employee leasing company;

9. Provide that an employee leasing company registering with the department under a limited registration would be required to notify the department within 30 days of the end of the quarter in which the employee leasing company became responsible for more than 50 employees ( which would subject it to a full registration requirement);

10. Provide that any employee leasing company group must demonstrate positive working capital, and would not be eligible to provide a bond or other security as a substitute;

11. Provide that the Department of Labor and Workforce Development may impose a registration fee of up to \$500, but is not required to do so;

12. Provide that if the department allows the use of an assurance organization to interact with the department on an employee leasing company's behalf, the department would not be required to approve or qualify the assurance organization;

13. Clarify that the section of the bill relating to a prospective imposition of the Sales Tax on employee leasing companies would apply to the imposition of the sales tax only pursuant to a law enacted after the effective date of this bill;

14. Change the effective date of the bill from nine to 12 months after enactment; and

15. Make technical amendments.

As amended by the committee, this bill is identical to Senate Bill No. 2164 (3R), which was also reported favorably by the committee today.