

34:11-58.1 to 34:11-58.6 et al.
LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2019 **CHAPTER:** 212

NJSA: 34:11-58.1 to 34:11-58.6 et al. (Concerns law regarding failure to pay wages.)

BILL NO: S1790 (Substituted for A2903)

SPONSOR(S) Loretta Weinberg and others

DATE INTRODUCED: 2/5/2018

COMMITTEE: **ASSEMBLY:** ---

SENATE: Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 6/27/2019

SENATE: 6/27/2019

DATE OF APPROVAL: 8/6/2019

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third Reprint enacted) Yes

S1790

SPONSOR'S STATEMENT: (Begins on page 17 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes Budget & Appropriations

(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)

FLOOR AMENDMENT STATEMENT: Yes 3/14/2019
6/10/2019

LEGISLATIVE FISCAL ESTIMATE: Yes 3/29/2019
7/2/2019

A2903

SPONSOR'S STATEMENT: (Begins on page 17 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Labor
Appropriations

SENATE: No

(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)

FLOOR AMENDMENT STATEMENT: Yes 6/10/2019

LEGISLATIVE FISCAL ESTIMATE: Yes 3/29/2019
7/2/2019

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"New law aims to protect NJ workers from wage theft by employers,"
NJBIZ (New Brunswick, NJ) - August 6, 2019

"N.J. acts to protect workers' pay, OT Wages New law cracks down on 'wage theft' by employers,"
The Star-Ledger, August 7, 2019

"N.J. acts to protect pay, overtime for workers,"
South Jersey Times (NJ) - August 8, 2019

RWHJA/

P.L. 2019, CHAPTER 212, *approved August 6, 2019*
Senate, No. 1790 (*Third Reprint*)

1 AN ACT concerning enforcement, penalties, and procedures for law
2 regarding failure to pay wages, revising various parts of the
3 statutory law, and supplementing ²**[article]** articles 1 and² 3 of
4 chapter 11 of Title 34 of the Revised Statutes.

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

8
9 ¹**[**1. Section 10 of P.L.1999, c.90 (C.2C:40A-2) is amended to
10 read as follows:

11 10. Violation of contract to pay employees.

12 a. An employer who has agreed with an employee or with a
13 bargaining agent for employees to pay wages, compensation or
14 benefits to or for the benefit of employees commits a disorderly
15 persons offense if the employer:

16 (1) fails to pay wages when due and as required by law; or

17 (2) fails to pay compensation or benefits as agreed and as
18 required by law, including all State wage, benefit and tax laws
19 within 30 days after due.

20 b. If a corporate employer violates subsection a., any officer or
21 employee of the corporation who is responsible for the violation
22 commits a disorderly persons offense.

23 c. Upon the presentation of sufficient evidence of a violation of
24 this section, the fact finder may infer that an employer who fails to
25 present employee records, as required pursuant to State wage,
26 benefit and tax laws, employed the complainant for the period of
27 time, and owes the amount of wages, as alleged in the complaint,
28 unless the employer demonstrates good cause for the failure to
29 present employee records.

30 d. A complaint alleging a violation of this section shall be filed
31 where the offense occurred, which for purposes of this section may
32 be the place where the employee was hired or the place where the
33 relevant work was performed by the employee.

34 e. Jurisdiction for prosecution under this section shall be the
35 place where the offense occurred, which for purposes of this section
36 may be the place where the employee was hired or the place where
37 the relevant work was performed by the employee.

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:

¹Senate SBA committee amendments adopted January 28, 2019.

²Senate floor amendments adopted March 14, 2019.

³Assembly floor amendments adopted June 10, 2019.

1 f. An employer found to owe wages to an employee because
2 the employer committed a violation of this section shall pay the
3 employee the wages owed plus liquidated damages equal to 200
4 percent of the wages owed, and reasonable costs of the action to the
5 employee.

6 g. In addition to damages provided in this or any other law, an
7 employer found guilty of violating the provisions of this section
8 shall be fined \$500 plus a penalty equal to 20 percent of any wages
9 owed for a first offense, and \$1,000 plus a penalty equal to 20
10 percent of any wages owed for subsequent offenses. Any sum
11 collected as a fine or penalty pursuant to this subsection shall be
12 applied toward enforcement and administration costs of the
13 Division of Wage and Hour Compliance in the Department of Labor
14 and Workforce Development.

15 h. An employer who is found to have retaliated against an
16 employee for filing a complaint under this section commits a
17 disorderly persons offense and shall, upon conviction for the
18 violation, be fined not less than \$100 nor more than \$1,000, and
19 shall be liable to the employee for all wages lost as a result of the
20 retaliation plus damages equal to 200 percent of the wages lost as a
21 result of the retaliation, and reasonable costs of the action to the
22 employee and, if the employee was discharged, be required to offer
23 reinstatement, unless the reinstatement is prohibited by law.

24 i. No payment of an amount of wages owed or related
25 damages, including wages or damages related to retaliation, shall be
26 required under this section in addition to any amount of wages and
27 damages paid for the same violation pursuant to any action taken
28 under State wage and hour laws.

29 j. For purposes of this section:

30 “Compensation or benefits” is remuneration received in return
31 for services rendered and includes, but is not limited to, health
32 benefits, pensions, medical treatment, disability compensation and
33 workers’ compensation, including death benefits to dependents of
34 workers who have died as a result of their employment.

35 “Employee” means any person suffered or permitted to work by
36 an employer, except that independent contractors and
37 subcontractors shall not be considered employees, except that, for
38 the purposes of subsections c. through i. of this section, “employee”
39 shall not include any employee working in the construction industry
40 under the provisions of a collective bargaining agreement.

41 “Employer” means any individual, partnership, association, joint
42 stock company, trust, corporation, the administrator or executor of
43 the estate of a deceased individual, or the receiver, trustee, or
44 successor of any of the same, employing any person in this State,
45 except that, for the purposes of subsections c. through i. of this
46 section, “employer” shall not include any employer in the
47 construction industry with respect to employees of that employer
48 working under the provisions of a collective bargaining agreement

1 with the employer. For the purposes of this section the officers of a
2 corporation and any agents having the management of that
3 corporation shall be deemed to be the employers of the employees
4 of the corporation.

5 “State wage and hour laws” means article 1 of chapter 11 of Title
6 34 of the Revised Statutes and all acts supplementing that article
7 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
8 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
9 and article 3 of chapter 11 of Title 34 of the Revised Statutes
10 (R.S.34:11-57 et seq.), but “State wage and hour laws” do not
11 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150
12 (C.34:11-56.25 et seq.), or "The Public Works Contractor
13 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.):

14 “State wage, benefit and tax laws” means State wage and hour
15 laws and all of the following:

- 16 (1) The workers’ compensation law, R.S.34:15-1 et seq.;
17 (2) The “unemployment compensation law,” R.S.43:21-1 et
18 seq.;
19 (3) The “Temporary Disability Benefits Law,” P.L.1948, c.110
20 (C.43:21-25 et al.);
21 (4) P.L.2008, c.17 (C.43:21-39.1 et al.); and
22 (5) The “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
23 seq.

24 “When due” is the time agreed upon by the employer and
25 employee but in any case not greater than 16 days of completion of
26 the work as provided for under section 2 of P.L.1965, c.173
27 (C.34:11-4.2) and in accordance with a bi-monthly payment
28 schedule.

29 (cf: P.L.1999, c.90, s.10)]¹

30

31 ¹**[2.] 1.**¹ Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is
32 amended to read as follows:

33 2. a.²(1)² If ²**[the commissioner is notified pursuant to**
34 subsection g. of this section by the Attorney General, the Attorney
35 General’s designee, or a court, of a conviction of an employer under
36 subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2), or if]²
37 the commissioner determines that an employer has failed, for one or
38 more of its employees, to maintain and report every record
39 regarding wages, benefits and taxes which the employer is required
40 to maintain and report pursuant to State wage, benefit and tax laws,
41 as defined in section 1 of this act, and has, in connection with that
42 failure to maintain or report the records, failed to pay wages,
43 benefits, taxes or other contributions or assessments as required by
44 those laws, the commissioner shall, as an alternative to, or in
45 addition to, any other actions taken in the enforcement of those
46 laws, notify the employer of the determination and have an audit of
47 the employer and any successor firm of the employer conducted not
48 more than 12 months after the determination.

1 ²(2) If the commissioner is notified pursuant to subsection g. of
2 this section of a conviction of an employer, the commissioner shall,
3 as an alternative to, or in addition to, any other actions taken in the
4 enforcement of the laws violated by the employer, have an audit of
5 the employer and any successor firm of the employer conducted not
6 more than 12 months after receipt of the notification.²

7 b. If, in an audit conducted pursuant to subsection a. of this
8 section, the commissioner determines that the employer or any
9 successor firm to the employer has continued in its failure to
10 maintain or report records as required by those laws ²**[and]** ²**or**
11 continued in its failure to pay wages, benefits, taxes or other
12 contributions or assessments as required by those laws, or if the
13 commissioner is notified pursuant to subsection g. of this section of
14 a ²**[subsequent]**² conviction of the employer ²**[under subsection a.**
15 of section 10 of P.L.1999, c.90 (C.2C:40A-2)] and the offense
16 resulting in the conviction occurred subsequent to an audit
17 conducted pursuant to subsection a. of this section², the
18 commissioner:

19 (1) May, after affording the employer or successor firm notice
20 and an opportunity for a hearing in accordance with the provisions
21 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
22 1 et seq.), issue a written determination directing any appropriate
23 agency to suspend any one or more licenses that are held by the
24 employer or successor firm, for a period of time determined by the
25 commissioner. In determining the length of a suspension, the
26 commissioner shall consider any of the following factors which are
27 relevant:

28 (a) The number of employees for which the employer or
29 successor firm failed to maintain or report required records and pay
30 required wages, benefits, taxes or other contributions or
31 assessments;

32 (b) The total amount of wages, benefits, taxes or other
33 contributions or assessments not paid by the employer or successor
34 firm;

35 (c) Any other harm resulting from the violation;

36 (d) Whether the employer or successor firm made good faith
37 efforts to comply with any applicable requirements;

38 (e) The duration of the violation;

39 (f) The role of the directors, officers or principals of the
40 employer or successor firm in the violation;

41 (g) Any prior misconduct by the employer or successor firm;
42 and

43 (h) Any other factors the commissioner considers relevant; and

44 (2) Shall conduct a subsequent audit or inspection of the
45 employer or any successor firm of the employer not more than 12
46 months after the date of the commissioner's written determination.

47 c. If, in the subsequent audit or inspection conducted pursuant
48 to subsection b. of this section, the commissioner determines that

1 the employer or successor firm has continued in its failure to
2 maintain or report records as required pursuant to State wage,
3 benefit and tax laws, as defined in section 1 of this act, and
4 continued in its failure to pay wages, benefits, taxes or other
5 contributions or assessments as required by those laws, or if the
6 commissioner is notified pursuant to subsection g. of this section of
7 a ²[subsequent]² conviction of the employer ²[under subsection a.
8 of section 10 of P.L.1999, c.90 (C.2C:40A-2)] for an offense
9 occurring after the audit conducted pursuant to subsection b. of this
10 section², the commissioner, after affording the employer or
11 successor firm notice and an opportunity for a hearing in
12 accordance with the provisions of the "Administrative Procedure
13 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall issue a written
14 determination directing any appropriate agency to permanently
15 revoke any one or more licenses that are held by the employer or
16 any successor firm to the employer and that are necessary to operate
17 the employer or successor firm.

18 d. Upon receipt of any written determination of the
19 commissioner directing an agency to suspend or revoke a license
20 pursuant to this section, and notwithstanding any other law, the
21 agency shall immediately suspend or revoke the license.

22 e. In instances where an employee leasing company has
23 entered into an employee leasing agreement with a client company
24 pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written
25 determination by the commissioner directing agencies to suspend an
26 employer license pursuant to subsection b. of this section, or revoke
27 an employer license pursuant to subsection c. of this section, for a
28 failure or continued failure to keep records regarding, and to pay,
29 wages, benefits and taxes pursuant to State wage, benefit and tax
30 laws, shall be for the suspension or revocation of the licenses of the
31 client company and not the licenses of the employee leasing
32 company if the commissioner determines that the failure or
33 continued failure was caused by incomplete, inaccurate, misleading,
34 or false information provided to the employee leasing company by
35 the client company. Nothing in this subsection shall be construed
36 as diminishing or limiting the authority or obligation of the
37 commissioner to rescind the registration of an employee leasing
38 company pursuant to the provisions of section 10 of P.L.2001,
39 c.260 (C.34:8-76).

40 f. If, in the course of an audit or inspection conducted pursuant
41 to this section, the commissioner discovers that an employee of the
42 employer or of any successor firm of the employer has failed to
43 provide compensation to the employee as required under any of the
44 State wage and hour laws as defined in ²[section 10 of P.L.1999,
45 c.90 (C.2C:40A-2)] R.S.34:11-57², then the commissioner shall
46 initiate a wage claim on behalf of the employee pursuant to
47 R.S.34:11-58.

1 g. Upon the conviction of an employer under subsection a. of
 2 section 10 of P.L.1999, c.90 (C.2C:40A-2) ² [the Attorney General,
 3 the Attorney General's designee,], section 13 of P.L. , c. (C.)
 4 (pending before the Legislature as this bill), subsection a. of section
 5 10 of P.L.1965, c.173 (C.34:11-4.10), subsection a. of section 25 of
 6 P.L.1966, c.113 (C.34:11-56a24), or N.J.S.2C:20-2 if the property
 7 stolen consists of compensation the employer failed to provide to an
 8 employee under any State wage and hour law as defined in
 9 R.S.34:11-57, the prosecutor² or the court shall notify the
 10 commissioner of the employer's conviction.
 11 (cf: P.L.2009, c.194, s.2)

12
 13 ¹[3.] ² Section 10 of P.L.1965, c.173 (C.34:11-4.10) is
 14 amended to read as follows:

15 10. a. Any employer who knowingly ²[and willfully] fails to
 16 pay the full amount of wages to an employee agreed to or required
 17 by, or in the manner required by, the provisions of article 1 of
 18 chapter 11 of Title 34 of the Revised Statutes and all acts
 19 supplementing that article (R.S.34:11-2 et al.), or who knowingly²
 20 violates any ²other² provision of P.L.1965, c.173 (34:11-4.1 et
 21 seq.), or who ²[discharges, or in any other manner discriminates]
 22 takes a retaliatory action² against an employee ²by discharging or in
 23 any other manner discriminating against the employee² because the
 24 employee has made a complaint to that employee's employer, to the
 25 commissioner, or to that employee's authorized representative, that
 26 the employer has not paid the employee the full amount of wages
 27 agreed upon or required by, and in the manner required by, the
 28 provisions of article 1 of chapter 11 of Title 34 of the Revised
 29 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
 30 or because the employee has caused to be instituted or is about to
 31 cause to be instituted any proceeding under or related to that article
 32 or those acts, or because that employee has testified or is about to
 33 testify in any proceeding under or relating to that article or those
 34 acts, or because the employee has informed any ²[person]
 35 employee of the employer² about rights under State laws regarding
 36 wages and hours worked, shall be guilty of a disorderly persons
 37 offense and, upon conviction for a ¹first¹ violation, shall be
 38 punished by a fine of not less than ¹[\$100] ¹\$500¹ nor more than
 39 \$1,000 ¹or by imprisonment for not less than 10 nor more than 90
 40 days or by both the fine and imprisonment and, upon conviction for
 41 a second ²or subsequent² violation, be punished by a fine of not less
 42 than \$1,000 nor more than \$2,000 or by imprisonment for not less
 43 than 10 nor more than 100 days or by both the fine and
 44 imprisonment¹. ²[¹Upon conviction for a third or subsequent
 45 violation, an employer shall be guilty of a crime of the fourth
 46 degree and be punished by a fine of not less than \$2,000 nor more
 47 than \$10,000 or by imprisonment for up to 18 months or by both the

1 fine and imprisonment.¹² Each ¹week, in any¹ day ¹【during】 of¹
2 which any violation of 【this act】 article 1 of chapter 11 of Title 34
3 of the Revised Statutes and all acts supplementing that article
4 (R.S.34:11-2 et al.) continues shall constitute a separate and distinct
5 offense. In the case of a discharge or other discriminatory action
6 against the employee which is in violation of this subsection, the
7 employer shall ²also² be required to offer reinstatement in
8 employment to the discharged employee²【, unless the reinstatement
9 is prohibited by law,】² and to correct the discriminatory action, and
10 also to pay to the employee, in full, all wages lost as a result of that
11 discharge or discriminatory action, plus ²【any reasonable cost of
12 the action, and】² liquidated damages equal to ²not more than² 200
13 percent of the wages due, under penalty of contempt proceedings.
14 Taking an adverse action against an employee within ninety days of
15 the employee filing a complaint with the commissioner ²or a claim
16 or action being brought by or on behalf of the employee in a court
17 of competent jurisdiction² for a violation of article 1 of chapter 11
18 of Title 34 of the Revised Statutes and all acts supplementing that
19 article (R.S.34:11-2 et al.) shall ²【raise a presumption】 be
20 considered presumptive evidence² that the ²employer's² action was
21 ²【a discriminatory action】 knowingly² taken in retaliation²【, which
22 may be rebutted only by clear and convincing evidence that the
23 action was taken for other, permissible, reasons】 against the
24 employee². An employee complaint or other communication need
25 not make explicit reference to any section or provision of any State
26 law regarding wages and hours worked to trigger the protections of
27 this section.

28 b. As an alternative to or in addition to any other sanctions
29 provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et
30 seq.), when the Commissioner of Labor and Workforce
31 Development finds that an employer has violated that act, or taken
32 any ²【discriminatory】 retaliatory² action against the employee in
33 violation of subsection a. of this section, the commissioner is
34 authorized to assess and collect administrative penalties, up to a
35 maximum of \$250 for a first violation and up to a maximum of
36 \$500 for each subsequent violation, specified in a schedule of
37 penalties to be promulgated as a rule or regulation by the
38 commissioner in accordance with the "Administrative Procedure
39 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the
40 amount of the penalty imposed because of a violation, the
41 commissioner shall consider factors which include the history of
42 previous violations by the employer, the seriousness of the
43 violation, the good faith of the employer and the size of the
44 employer's business. No administrative penalty shall be levied
45 pursuant to this section unless the Commissioner of Labor and
46 Workforce Development provides the alleged violator with
47 notification of the violation and of the amount of the penalty by
48 certified mail and an opportunity to request a hearing before the

1 commissioner or his designee within 15 days following the receipt
2 of the notice. If a hearing is requested, the commissioner shall
3 issue a final order upon such hearing and a finding that a violation
4 has occurred. If no hearing is requested, the notice shall become a
5 final order upon expiration of the 15-day period. Payment of the
6 penalty is due when a final order is issued or when the notice
7 becomes a final order. Any penalty imposed pursuant to this
8 section may be recovered with costs in a summary proceeding
9 commenced by the commissioner pursuant to **["the penalty**
10 **enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty
11 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
12 Any sum collected as a fine or penalty pursuant to this section shall
13 be applied toward enforcement and administration costs of the
14 Division of Workplace Standards in the Department of Labor and
15 Workforce Development.

16 c. If any employer fails to pay the full amount of wages to an
17 employee agreed to or required by, or in the manner required by,
18 the provisions of article 1 of chapter 11 of Title 34 of the Revised
19 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
20 the employee may recover in a civil action the full amount of any
21 wages due, or any wages ²[due] lost² because of any
22 ²[discriminatory] retaliatory² action ²taken² in violation of
23 subsection a. of this section, plus an amount of liquidated damages
24 equal to ³not more than³ 200 percent of the wages ²lost or of the
25 wages² due, together with costs and reasonable attorney's fees as
26 are allowed by the court, except that if there is an agreement of the
27 employee to accept payment of the unpaid wages supervised by the
28 commissioner pursuant to section 9 of P.L.1965, c.173 (C.34:11-
29 4.9) or R.S.34:11-58, the liquidated damages shall be equal to ³not
30 more than³ 200 percent of wages that were due prior to the
31 supervised payment. ³The payment of liquidated damages shall not
32 be required for a first violation by an employer if the employer
33 shows to the satisfaction of the court that the act or omission
34 constituting the violation was an inadvertent error made in good
35 faith and that the employer had reasonable grounds for believing
36 that the act or omission was not a violation, and the employer
37 acknowledges that the employer violated the law and pays the
38 amount owed within 30 days of notice of the violation. ³ ²In a case
39 of retaliation against an employee in violation of the provisions of
40 subsection a. of this section, the employer shall also be required to
41 offer reinstatement in employment to the discharged employee and
42 take other actions as needed to correct the retaliatory action. For
43 purposes of this subsection, an employer taking an adverse action
44 against an employee within ninety days of the employee filing a
45 complaint with the commissioner, or a claim or action being
46 brought by or on behalf of the employee in a court of competent
47 jurisdiction, for a violation of provisions of article 1 of chapter 11
48 of Title 34 of the Revised Statutes and all acts supplementing that
49 article (R.S.34:11-2 et al.) shall raise a presumption that the
50 employer's action was taken in retaliation against the employee,

1 which presumption may be rebutted only by clear and convincing
2 evidence that the action was taken for other, permissible, reasons.²
3 Any agreement by the employee to work for, or accept, wages paid
4 which are less than the amount agreed to or required by law, or paid
5 in a manner other than that required by article 1 of chapter 11 of
6 Title 34 of the Revised Statutes and all acts supplementing that
7 article (R.S.34:11-2 et al.), shall be no defense to the action. The
8 employee shall be entitled to maintain the action for and on behalf
9 of other similarly situated employees, or designate an agent or
10 representative to maintain the action for and on behalf of all
11 similarly situated employees. The employee may bring the action
12 ²[to recover] for all appropriate relief, including reinstatement, the
13 payment of damages and the recovery of lost wages or² unpaid
14 wages pursuant to this section in the Superior Court³], and may
15 bring the action in the Division of Small Claims of the Superior
16 Court, Law Division, Special Civil Part if the sum of the unpaid
17 wages and the liquidated damages does not exceed the jurisdictional
18 limits of the Division of Small Claims]³. Upon the request of any
19 employee not paid the full wages agreed upon or required by law
20 and in the manner required by the provisions of article 1 of chapter
21 11 of Title 34 of the Revised Statutes and all acts supplementing
22 that article (R.S.34:11-2 et al.), the commissioner may take an
23 assignment of the wage claim in trust for the assigning employee
24 and may bring any legal action necessary to collect the claim, and
25 the employer shall be required to pay to the employee the unpaid
26 wages and liquidated damages equal to ³not more than³ 200 percent
27 of the amount of the unpaid wages and pay to the commissioner the
28 costs and reasonable attorney's fees as determined by the court.
29 ³The payment of liquidated damages shall not be required for a first
30 violation by an employer if the employer shows to the satisfaction
31 of the court that the act or omission constituting the violation was
32 an inadvertent error made in good faith and that the employer had
33 reasonable grounds for believing that the act or omission was not a
34 violation, and the employer acknowledges that the employer
35 violated the law and pays the amount owed within 30 days of notice
36 of the violation.³

37 (cf: P.L.1991, c.205, s.3)

38
39 ¹[4.] ^{3.1} Section 25 of P.L.1966, c.113 (C.34:11-56a24) is
40 amended to read as follows:

41 25. a. Any employer who ²[discharges or in any other manner
42 discriminates] takes a retaliatory action² against any employee ²by
43 discharging or in any other manner discriminating against the
44 employee² because the employee has made any complaint to his
45 employer, to the commissioner, the director or to their authorized
46 representatives, or to a representative of the employee, that he has
47 not been paid wages in accordance with the provisions of this act,
48 or because such employee has caused to be instituted or is about to
49 cause to be instituted any proceeding under or related to this act, or

1 because such employee has testified or is about to testify in any
2 such proceeding, or because such employee has served or is about
3 to serve on a wage board, or because the employee has informed
4 any ²[person] employee of the employer² about rights under State
5 laws regarding wages and hours of work, shall be guilty of a
6 disorderly persons offense and shall, upon conviction ²[therefor]
7 for a first violation², be fined not less than ¹[\$100] \$500¹ nor more
8 than \$1,000 ¹or by imprisonment for not less than 10 nor more than
9 90 days or by both the fine and imprisonment and, upon conviction
10 for a second ²or subsequent² violation, be punished by a fine of not
11 less than \$1,000 nor more than \$2,000 or by imprisonment for not
12 less than 10 nor more than 100 days or by both the fine and
13 imprisonment¹. ²[¹Upon conviction for a third or subsequent
14 violation, an employer shall be guilty of a crime of the fourth
15 degree and be punished by a fine of not less than \$2,000 nor more
16 than \$10,000 or by imprisonment for up to 18 months or by both the
17 fine and imprisonment.¹ Such] The² employer shall ²also² be
18 required, as a condition of such judgment of conviction, to offer
19 reinstatement in employment to ²[any such] the² discharged
20 employee²[, unless the reinstatement is prohibited by law,]² and to
21 correct any such discriminatory action, and also to pay to any such
22 employee in full, all wages lost as a result of such discharge or
23 discriminatory action and an additional amount of liquidated
24 damages equal to ²not more than² 200 percent of the wages ²[due]
25 lost², under penalty of contempt proceedings for failure to comply
26 with such requirement. Taking an adverse action against an
27 employee within ninety days of the employee filing a complaint
28 with the commissioner², or a claim or action being brought by or on
29 behalf of the employee in a court of competent jurisdiction,² for a
30 violation of P.L.1966, c.113 (C.34:11-56a et seq.) shall ²[raise a
31 presumption] be considered presumptive evidence² that the
32 ²employer's² action was ²[a discriminatory action] knowingly²
33 taken in retaliation²[, which may be rebutted only by clear and
34 convincing evidence that the action was taken for other,
35 permissible, reasons] against the employee². An employee
36 complaint or other communication need not make explicit reference
37 to any section or provision of State law regarding wages or hours
38 worked to trigger the protections of this section.

39 b. As an alternative to or in addition to any other sanctions
40 provided by law for violations of P.L.1966, c.113 (C.34:11-56a et
41 seq.), when the Commissioner of Labor and Workforce
42 Development finds that an employer has violated that act, or taken
43 any ²[discriminatory] retaliatory² action against the employee in
44 violation of subsection a. of this section, the commissioner is
45 authorized to assess and collect administrative penalties, up to a
46 maximum of \$250 for a first violation and up to a maximum of
47 \$500 for each subsequent violation, specified in a schedule of
48 penalties to be promulgated as a rule or regulation by the

1 commissioner in accordance with the "Administrative Procedure
2 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the
3 amount of the penalty imposed because of a violation, the
4 commissioner shall consider factors which include the history of
5 previous violations by the employer, the seriousness of the
6 violation, the good faith of the employer and the size of the
7 employer's business. No administrative penalty shall be levied
8 pursuant to this section unless the Commissioner of Labor and
9 Workforce Development provides the alleged violator with
10 notification of the violation and of the amount of the penalty by
11 certified mail and an opportunity to request a hearing before the
12 commissioner or his designee within 15 days following the receipt
13 of the notice. If a hearing is requested, the commissioner shall
14 issue a final order upon such hearing and a finding that a violation
15 has occurred. If no hearing is requested, the notice shall become a
16 final order upon expiration of the 15-day period. Payment of the
17 penalty is due when a final order is issued or when the notice
18 becomes a final order. Any penalty imposed pursuant to this
19 section may be recovered with costs in a summary proceeding
20 commenced by the commissioner pursuant to **["the penalty**
21 **enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty
22 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
23 Any sum collected as a fine or penalty pursuant to this section shall
24 be applied toward enforcement and administration costs of the
25 Division of Workplace Standards in the Department of Labor and
26 Workforce Development.
27 (cf: P.L.1991, c.205, s.22)

28
29 ¹**[5.] 4.**¹ Section 26 of P.L.1966, c.113 (C.34:11-56a25) is
30 amended to read as follows:

31 26. If any employee is paid by an employer less than the
32 minimum fair wage to which **[such]** the employee is entitled under
33 the provisions of **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or
34 by virtue of a minimum fair wage order **[such]**², or suffers a loss of
35 wages or other damages because of a retaliatory action by the
36 employer in violation of the provisions of section 24 of P.L.1966,
37 c.113 (C.34:11-56a24)², the employee may recover in a civil action
38 the full amount of **[such]** that minimum wage less any amount
39 actually paid to him or her by the employer **[together with]**², or any
40 wages lost due to the retaliatory action,² and an additional amount
41 equal to³ not more than³ 200 percent of the amount of the unpaid
42 minimum wages² or wages lost due to retaliatory action² as
43 liquidated damages, plus costs and **[such]** reasonable attorney's
44 fees as **[may be allowed]** determined by the court, **[and any]**
45 except that if there is an agreement of the employee to accept
46 payment of the unpaid wages or compensation supervised by the
47 commissioner pursuant to section 24 of P.L.1966, c.113 (C.34:11-

1 56a23) or R.S.34:11-58, the liquidated damages shall be equal to
2 ³not more than³ 200 percent of wages that were due prior to the
3 supervised payment. ³The payment of liquidated damages shall not
4 be required for a first violation by an employer if the employer
5 shows to the satisfaction of the court that the act or omission
6 constituting the violation was an inadvertent error made in good
7 faith and that the employer had reasonable grounds for believing
8 that the act or omission was not a violation, and the employer
9 acknowledges that the employer violated the law and pays the
10 amount owed within 30 days of notice of the violation.³ ²In a case
11 of retaliation against an employee in violation of the provisions of
12 section 24 of P.L.1966, c.113 (C.34:11-56a24), the employer shall
13 also be required to offer reinstatement in employment to the
14 discharged employee, and take other actions as needed to correct
15 the retaliatory action. For purposes of this section, an employer
16 taking an adverse action against an employee within 90 days of the
17 employee filing a complaint with the commissioner or a claim or
18 action being brought by or on behalf of the employee in a court of
19 competent jurisdiction for a violation of P.L.1966, c.113 (C.34:11-
20 56a et seq.) shall raise a presumption that the employer's action was
21 taken in retaliation against the employee, which presumption may
22 be rebutted only by clear and convincing evidence that the action
23 was taken for other, permissible, reasons.² Any agreement between
24 【such】 the employee and the employer to work for less than 【such】
25 the minimum fair wage shall be no defense to the action. An
26 employee shall be entitled to maintain 【such】 the action for and on
27 behalf of himself or other employees similarly situated, and 【such】
28 the employee and employees may designate an agent or
29 representative to maintain 【such】 the action for and on behalf of all
30 employees similarly situated. The employee may bring the action
31 to recover unpaid minimum wages², or wages lost due to retaliatory
32 action, or other appropriate relief, including reinstatement and
33 payment of damages² pursuant to this section^{2,2} in the Superior
34 Court³【, and may bring the action in the Division of Small Claims
35 of the Superior Court, Law Division, Special Civil Part if the sum
36 of the amount of unpaid minimum wages ²or lost wages² and the
37 amount of liquidated damages does not exceed the jurisdictional
38 limits of the Division of Small Claims】³.

39 At the request of any employee paid less than the minimum wage
40 to which 【such】 the employee was entitled under the provisions of
41 【this act】 P.L.1966, c.113 (C.34:11-56a et seq.) or under an order,
42 the commissioner may take an assignment of the wage claim in trust
43 for the assigning employee and may bring any legal action
44 necessary to collect the claim, and the employer shall be required to
45 pay to the employee the unpaid wages and liquidated damages equal
46 to ²not more then² 200 percent the amount of the unpaid wages and
47 pay to the commissioner the costs and 【such】 reasonable attorney's

1 fees as **[may be allowed]** determined by the court. ³The payment
2 of liquidated damages shall not be required for a first violation by
3 an employer if the employer shows to the satisfaction of the court
4 that the act or omission constituting the violation was an inadvertent
5 error made in good faith and that the employer had reasonable
6 grounds for believing that the act or omission was not a violation,
7 and the employer acknowledges that the employer violated the law
8 and pays the amount owed within 30 days of notice of the
9 violation.³

10 (cf: P.L.1966, c.113, s.26)

11
12 ¹**[6.] 5.**¹ Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is
13 amended to read as follows:

14 1. No claim for unpaid minimum wages, unpaid overtime
15 compensation, ²unlawful discharge or other discriminatory acts
16 taken in retaliation against the employee,² or other damages under
17 this act shall be valid with respect to any such claim which has
18 arisen more than **[2]** six years prior to the commencement of an
19 action for the recovery thereof. In determining when an action is
20 commenced, the action shall be considered to be commenced on the
21 date when a complaint is filed with the Commissioner of the
22 Department of Labor and **[Industry]** Workforce Development or
23 the Director of **[the]** Wage and Hour **[Bureau]** Compliance, and
24 notice of such complaint is served upon the employer; or, where an
25 audit by the Department of Labor and **[Industry]** Workforce
26 Development discloses a probable cause of action for unpaid
27 minimum wages, unpaid overtime compensation, or other damages,
28 and notice of such probable cause of action is served upon the
29 employer by the Director of **[the]** Wage and Hour **[Bureau]**
30 Compliance; or where a cause of action is commenced in a court of
31 appropriate jurisdiction.

32 (cf: P.L.1967, c.216, s.1)

33
34 ¹**[7.] 6.**¹ R.S.34:11-57 is amended to read as follows:

35 34:11-57. As used in this article:

36 "Commissioner" means the Commissioner of Labor and
37 **[Industry]** Workforce Development or any person or persons in the
38 department designated in writing by him for the purposes of this
39 article.

40 "Community-based organization" means a public, or nonprofit
41 private, organization funded with public or private funds, or both,
42 that provides services to day laborers, migrant laborers, temporary
43 laborers, low wage workers, or any other type of employee.

44 "Department" means the Department of Labor and Workforce
45 Development.

46 "Employee" means any natural person who works for another for
47 hire.

1 "Employer" means any person, partnership, firm or corporation
2 employing another for hire.

3 "Legal services organization" means a public, or nonprofit
4 private, organization funded with public or private funds, or both,
5 that provides counseling or advice related to wage protection laws,
6 preparation of legal documents, or representation of any person
7 before a court or administrative agency.

8 "State wage and hour laws" means article 1 of chapter 11 of Title
9 34 of the Revised Statutes and all acts supplementing that article
10 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
11 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
12 and article 3 of chapter 11 of Title 34 of the Revised Statutes
13 (R.S.34:11-57 et seq.), but "State wage and hour laws" do not
14 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150
15 (C.34:11-56.25 et seq.), or "The Public Works Contractor
16 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

17 "Wages" means any moneys due an employee from the employer
18 whether payable by the hour, day, week, semimonthly, monthly or
19 yearly and shall include commissions, bonus, piecework
20 compensation and any other benefits arising out of an employment
21 contract.

22 (cf: P.L.1964, c.92, s.1)

23

24 ¹**[8.] 7.**¹ R.S.34:11-58 is amended to read as follows:

25 34:11-58. a. An employee may file a claim for wages against
26 an employer under this section or any of the other State wage and
27 hours laws for wages owed related to work performed², including
28 but not limited to wages owed related to unpaid minimum wages,
29 unpaid overtime compensation, wages lost because of unlawful
30 discharge or other discriminatory acts taken in retaliation against
31 the employee,² up to six years prior to the date the claim for wages
32 is filed.

33 b. An employer found to owe an employee wages shall pay the
34 employee the wages owed plus liquidated damages equal to ²not
35 more than² 200% of the wages owed, exclusive of any costs or fees.

36 c. The commissioner is authorized and empowered to
37 investigate any claim for wages due an employee and in such
38 investigation may summon the defendant, subpoena witnesses,
39 administer oaths, take testimony and shall upon such proceeding
40 make a decision or award **[**when the sum in controversy, exclusive
41 of costs, does not exceed \$30,000.00¹**]** ¹when the sum in
42 controversy, exclusive of costs, does not exceed \$50,000¹.

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

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

1 d. Upon an investigation of a wage claim initiated pursuant to
 2 this section or any of the other State wage and hours laws, if an
 3 employer fails to provide sufficient employee records, as required
 4 to be kept under any State wage and hour laws, there shall be a
 5 rebuttable presumption that the employee worked for the employer
 6 for the period of time and for the amount of wages as alleged in the
 7 wage claim. ¹The rebuttable presumption shall not apply to an
 8 employer that can demonstrate it does not have sufficient employee
 9 records as a result of record destruction due to a natural disaster.¹

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

25 f. Upon issuing a decision, under this section or any of the
 26 other State wage and hours laws, finding wages due to an employee
 27 in an amount equal to or greater than \$5,000, the commissioner
 28 shall:

29 (1) inform the employer ²[of] that ²the ²[commissioner's
 30 intention to] commissioner may ²conduct an audit of the employer
 31 or any successor firm of the employer pursuant to section 2 of
 32 P.L.2009, c.194 (C.34:1A-1.12); and

33 (2) notify the Division of Taxation in the Department of the
 34 Treasury of the decision and ²may ²recommend that the division
 35 conduct an audit of the employer to ensure the proper withholding
 36 and payment of payroll and other taxes by the employer.

37 g. No payment of an amount of wages owed or related
 38 damages, including wages or damages related to retaliation, shall be
 39 required under the provision of this section, or under the provisions
 40 of any of the other State wage and hour laws, which results in a
 41 violation paying wages owed or damages more than one time for the
 42 same violation.

43 (cf: P.L.2006, c.25, s.1)

44
 45 ¹[9.] 8.¹ (New section) a. If an employer fails to comply with
 46 a final determination of the commissioner or a judgment of a court,
 47 including a small claims court, made under the provisions of State
 48 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40-2),

1 to pay an employee any wages owed or damages awarded within ten
2 days of the time that the determination or judgement requires the
3 payment, the commissioner may do either or both of the following:

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

9 (2) issue a stop work order against the violators requiring the
10 cessation of all business operations of the violator. The stop work
11 order may only be issued against the individual or entity found to be
12 in violation, and only as to the specific place of business or
13 employment for which the violation exists. The stop work order
14 shall be effective when served upon the violator or at a place of
15 business or employment by posting a copy of the stop work order in
16 a conspicuous location at the place of business or employment. The
17 stop work order shall remain in effect until the commissioner issues
18 an order releasing the stop work order upon a finding that the
19 violation has been corrected. As a condition of release of a stop-
20 work order under this section, the commissioner may require the
21 employer against whom the stop-work order had been issued to file
22 with the department periodic reports for a probationary period of
23 two years.

24 b. Stop work orders and any penalties imposed under a stop
25 work order against a corporation, partnership, or sole proprietorship
26 shall be effective against any successor entity that has one or more
27 of the same principals or officers as the corporation, partnership, or
28 sole proprietorship against which the stop work order was issued
29 and that is engaged in the same or equivalent trade or activity.

30 c. Any employee affected by a stop work order issued pursuant
31 to this section shall be paid by the employer for the first ten days of
32 work lost because of the stop work order.

33 d. A rebuttable presumption that an employer has established a
34 successor entity shall arise if the two share at least ¹~~three~~ two¹ of
35 the following capacities or characteristics:

36 (1) perform similar work ¹within the same geographical area¹;

37 (2) occupy the same premises;

38 (3) have the same telephone or fax number;

39 (4) have the same email address or Internet website;

40 (5) ¹~~perform work in the same geographical area~~;

41 (6) ¹~~employ substantially the same work force~~, administrative
42 employees, or both¹;

43 ³~~[(7)] (6)~~³ utilize the same tools ¹~~and~~, facilities, or¹
44 equipment;

45 ³~~[(8)] (7)~~³ employ or engage the services of any person or
46 persons involved in the direction or control of the other; or

47 ³~~[(9)] (8)~~³ list substantially the same work experience.
48

1 ¹**[10.] 9.**¹ (New section) a. A client employer and a labor
2 contractor providing workers to the client employer shall be subject
3 to joint and several liability and shall share civil legal responsibility
4 for any violations of the provisions of State wage and hour laws or
5 violations of the provisions of section 10 of P.L.1999, c.90
6 (C.2C:40A-2) regarding compliance with State wage and hour laws,
7 including provisions regarding retaliatory actions against employees
8 for exercising their rights under any of those laws, and both may be
9 subject to any remedy provided for violations of those laws. A
10 client employer shall not shift to the labor contractor any legal
11 duties or liabilities under the provisions of the “Worker Health and
12 Safety Act,” P.L.1965, c.154 (C.34:6A-1 et seq.) or “The Worker
13 and Community Right to Know Act,” P.L.1983, c.315 (C.34:5A-1
14 et seq.) with respect to workers supplied by the labor contractor. A
15 waiver of the provisions of this section is contrary to public policy,
16 and is void and unenforceable.

17 b. This section shall not be interpreted as:

18 (1) imposing individual liability on a homeowner for labor or
19 services received at the home or the owner of a home-based
20 business for labor or services received at the home; or

21 (2) restricting or limiting the rights of a client employer to
22 recover from a labor contractor any expense to the client employer,
23 or the rights of a labor contractor to recover from a client employer
24 any expense to the labor contractor, resulting from any violation by
25 the labor contractor or client employer of the provisions of State
26 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-
27 2), or restricting or limiting the provisions in contracts between
28 client employers and labor contractors regarding the recovery of
29 expenses pursuant to this paragraph.

30 c. As used in this section:

31 “Client employer” means a business entity, regardless of its
32 form, that obtains or is provided workers, directly from a labor
33 contractor or indirectly from a subcontractor, to perform labor or
34 services within its usual course of business.

35 “Labor contractor” means any individual or entity that supplies,
36 either with or without a contract, directly or indirectly, a client
37 employer with workers to perform labor or services within the
38 client employer’s usual course of business, except that “labor
39 contractor” does not include a bona fide labor organization or
40 apprenticeship program, or a hiring hall operated pursuant to a
41 collective bargaining agreement.

42 “Usual course of business” means the regular and customary
43 work of a business, performed within or upon the premises or
44 worksite of the client employer, or any other place of business of
45 the client employer for which services or labor are performed.

46

47 ¹**[11.] 10.**¹ (New section) Each employer shall provide each
48 current employee and each newly hired employee of the employer, a

1 written copy of the statement produced by the department pursuant
2 to ²[subsection c. of]² section ²[12] 11² of P.L. , c. (C.)
3 (pending before the Legislature as this bill) of the employee's rights
4 under the provisions of State wage and hour laws and the provisions
5 of section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation
6 of how to file a claim or take an action pursuant to those laws.

7
8 ¹[12.] 11.¹ (New section) The department, for the purpose of
9 supporting the enforcement of the provisions of State wage and
10 hour laws and the provisions of section 10 of P.L.1999, c.90
11 (C.2C:40A-2), ²[shall:

12 a.] may² contract with community-based organizations and legal
13 services organizations to disseminate information to day laborers,
14 migrant laborers, temporary laborers, or any other type of employee
15 concerning the protections afforded by State wage and hour laws
16 and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by
17 which an individual may take actions under those laws²];

18 b. contract with community-based organizations and legal
19 services organizations to investigate, prepare, and if necessary,
20 represent employees in actions under State wage and hour laws or
21 section 10 of P.L.1999, c.90 (C.2C:40A-2), including actions under
22 those laws concerning retaliation against employees; and

23 c.] and shall² produce, and make available to the public on the
24 website of the department ²in printable form², a statement of
25 employee rights under the provisions of State wage and hour laws
26 and the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2),
27 with an explanation of how to file a claim or take an action pursuant
28 to those laws.

29 The contracts entered into between the department and
30 community-based organizations and legal services organizations
31 pursuant to this section shall require that the organizations make all
32 services accessible to persons with limited English proficiency
33 ²[and shall provide that, in any case in which the community-based
34 or legal services organization assists or represents employees
35 pursuant to subsection b. of this section, 50 percent of any fees or
36 penalties collected by the department shall be paid to the
37 organization for services provided pursuant to contracts entered into
38 pursuant to this section, and that]. Any² payment ²made to an
39 organization under a contract² shall be regarded as an enforcement
40 and administrative cost of the Division of Workplace Standards of
41 the department.

42 The department, and any community-based organization or legal
43 services organization contracting with the department pursuant to
44 this section, shall provide any individual seeking assistance to file a
45 complaint or take an action regarding unpaid wages with a
46 description of all of the applicable remedies available to the
47 individual under State wage and hour laws and section 10 of

1 P.L.1999, c.90 (C.2C:40A-2), including the individual's right to
2 obtain liquidated damages, and that that right to damages is waived
3 if the individual agrees to accept payment of the unpaid wages
4 supervised by the commissioner.
5

6 ¹**[13.] 12.**¹ (New section) a. The commissioner, in consultation
7 with the Administrative Director of the Courts and the Attorney
8 General, shall compile and prominently place on a website,
9 maintained by the department and available to the public, an annual
10 report evaluating the effectiveness and efficiency of the
11 enforcement and administration of wage claims and wage
12 collections. The report shall include, but not be limited to:

13 (1) the number of complaints, investigations, prosecutions,
14 dispositions, and business license suspensions and revocations, the
15 number and amount of penalties, the amount of wages recovered,
16 and the number of workers effected;

17 (2) an enumeration and description of all community-based and
18 legal services organizations contracted by the department to support
19 the enforcement; and

20 (3) recommendations for strengthening the implementation and
21 enforcement of P.L. , c. (C.) (pending before the
22 Legislature as this bill).

23 b. The commissioner, in consultation with the Administrative
24 Director of the Courts and the Attorney General, shall compile and
25 prominently place on a website, maintained by the department and
26 available to the public, the following information regarding each
27 wage claim in which an employer was found to have been in
28 violation of one or more State wage and hour laws in a final
29 determination by the commissioner or a judgement of a court made
30 during the preceding period of not less than 12 months:

31 (1) the name and address of the employer;

32 (2) the nature of the claim, including whether it is a claim for
33 one or more of the following: unpaid wages; failure to pay the
34 minimum wage; failure to pay required overtime; or retaliation
35 against an employee in connection with State wage and hour laws;

36 (3) the number of affected employees, and the amount of wages
37 found owed; and

38 (4) any findings, penalties, and business license suspensions or
39 revocations that resulted from the wage claim.

40 The information on a claim shall be placed on the website not
41 more than 30 days after the final determination or judgement is
42 made.
43

44 ²13. (New section) a. A person commits the crime of pattern of
45 wage nonpayment if the person knowingly commits an act that
46 violates the provisions of N.J.S.2C:40A-2, N.J.S.2C:20-2 if the
47 property stolen consists of compensation the employer failed to
48 provide to an employee as required under the provisions of any

1 State wage and hour law as defined in R.S.34:11-57, subsection a.
2 of section 10 of P.L.1965, c.173 (C.34:11-4.10), or subsection a. of
3 section 25 of P.L.1966, c.113 (C.34:11-56a24), if the person has, on
4 two or more prior occasions, been convicted of a violation of the
5 provisions of any of those laws. It shall not be a defense that the
6 violations were not part of a common plan or scheme, or did not
7 have similar methods of commission.

8 b. Pattern of wage non-payment is a crime of the third degree,
9 except that the presumption of nonimprisonment set forth in
10 subsection e. of N.J.S.2C:44-1 for persons who have not previously
11 been convicted of an offense shall not apply. Notwithstanding the
12 provisions of N.J.S.2C:1-8 or any other law, a conviction of pattern
13 of wage non-payment shall not merge with a conviction of violation
14 of N.J.S.2C:40A-2, N.J.S.2C:20-2, subsection a. of section 10 of
15 P.L.1965, c.173 (C.34:11-4.10), subsection a. of section 25 of
16 P.L.1966, c.113 (C.34:11-56a24), or any other criminal offense, nor
17 shall such other conviction merge with a conviction under this
18 section.

19 c. An employer found to be in violation of this section shall be
20 deemed to have caused loss to the employees in the amount by
21 which the employees were paid less than the full wages agreed upon
22 or required by law and shall be subject to the provisions of
23 N.J.S.2C:43-3 regarding fines and restitution to victims and be
24 subject to other pertinent provisions of Title 2C of the New Jersey
25 Statutes, including, but not limited to, N.J.S.2C:43-4, 2C:43-6 and
26 2C:44-1.²

27
28 ¹[14.] ²[13.1] ²14. ²This act shall take effect immediately²,
29 except that section 13 shall take effect on the first day of the third
30 month following enactment².

31
32
33
34
35 _____
Concerns law regarding failure to pay wages.

SENATE, No. 1790

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 5, 2018

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Concerns law regarding failure to pay wages.

CURRENT VERSION OF TEXT

As introduced.



S1790 WEINBERG

2

1 AN ACT concerning enforcement, penalties, and procedures for law
2 regarding failure to pay wages, revising various parts of the
3 statutory law, and supplementing article 3 of chapter 11 of Title
4 34 of the Revised Statutes.

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

8
9 1. Section 10 of P.L.1999, c.90 (C.2C:40A-2) is amended to
10 read as follows:

11 10. Violation of contract to pay employees.

12 a. An employer who has agreed with an employee or with a
13 bargaining agent for employees to pay wages, compensation or
14 benefits to or for the benefit of employees commits a disorderly
15 persons offense if the employer:

16 (1) fails to pay wages when due and as required by law; or

17 (2) fails to pay compensation or benefits as agreed and as
18 required by law, including all State wage, benefit and tax laws
19 within 30 days after due.

20 b. If a corporate employer violates subsection a., any officer or
21 employee of the corporation who is responsible for the violation
22 commits a disorderly persons offense.

23 c. Upon the presentation of sufficient evidence of a violation of
24 this section, the fact finder may infer that an employer who fails to
25 present employee records, as required pursuant to State wage,
26 benefit and tax laws, employed the complainant for the period of
27 time, and owes the amount of wages, as alleged in the complaint,
28 unless the employer demonstrates good cause for the failure to
29 present employee records.

30 d. A complaint alleging a violation of this section shall be filed
31 where the offense occurred, which for purposes of this section may
32 be the place where the employee was hired or the place where the
33 relevant work was performed by the employee.

34 e. Jurisdiction for prosecution under this section shall be the
35 place where the offense occurred, which for purposes of this section
36 may be the place where the employee was hired or the place where
37 the relevant work was performed by the employee.

38 f. An employer found to owe wages to an employee because
39 the employer committed a violation of this section shall pay the
40 employee the wages owed plus liquidated damages equal to 200
41 percent of the wages owed, and reasonable costs of the action to the
42 employee.

43 g. In addition to damages provided in this or any other law, an
44 employer found guilty of violating the provisions of this section
45 shall be fined \$500 plus a penalty equal to 20 percent of any wages

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.

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1 owed for a first offense, and \$1,000 plus a penalty equal to 20
2 percent of any wages owed for subsequent offenses. Any sum
3 collected as a fine or penalty pursuant to this subsection shall be
4 applied toward enforcement and administration costs of the
5 Division of Wage and Hour Compliance in the Department of Labor
6 and Workforce Development.

7 h. An employer who is found to have retaliated against an
8 employee for filing a complaint under this section commits a
9 disorderly persons offense and shall, upon conviction for the
10 violation, be fined not less than \$100 nor more than \$1,000, and
11 shall be liable to the employee for all wages lost as a result of the
12 retaliation plus damages equal to 200 percent of the wages lost as a
13 result of the retaliation, and reasonable costs of the action to the
14 employee and, if the employee was discharged, be required to offer
15 reinstatement, unless the reinstatement is prohibited by law.

16 i. No payment of an amount of wages owed or related
17 damages, including wages or damages related to retaliation, shall be
18 required under this section in addition to any amount of wages and
19 damages paid for the same violation pursuant to any action taken
20 under State wage and hour laws.

21 j. For purposes of this section:

22 “Compensation or benefits” is remuneration received in return
23 for services rendered and includes, but is not limited to, health
24 benefits, pensions, medical treatment, disability compensation and
25 workers’ compensation, including death benefits to dependents of
26 workers who have died as a result of their employment.

27 “Employee” means any person suffered or permitted to work by
28 an employer, except that independent contractors and
29 subcontractors shall not be considered employees, except that, for
30 the purposes of subsections c. through i. of this section, “employee”
31 shall not include any employee working in the construction industry
32 under the provisions of a collective bargaining agreement.

33 “Employer” means any individual, partnership, association, joint
34 stock company, trust, corporation, the administrator or executor of
35 the estate of a deceased individual, or the receiver, trustee, or
36 successor of any of the same, employing any person in this State,
37 except that, for the purposes of subsections c. through i. of this
38 section, “employer” shall not include any employer in the
39 construction industry with respect to employees of that employer
40 working under the provisions of a collective bargaining agreement
41 with the employer. For the purposes of this section the officers of a
42 corporation and any agents having the management of that
43 corporation shall be deemed to be the employers of the employees
44 of the corporation.

45 “State wage and hour laws” means article 1 of chapter 11 of Title
46 34 of the Revised Statutes and all acts supplementing that article
47 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
48 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),

1 and article 3 of chapter 11 of Title 34 of the Revised Statutes
2 (R.S.34:11-57 et seq.), but “State wage and hour laws” do not
3 include the “New Jersey Prevailing Wage Act,” P.L.1963, c.150
4 (C.34:11-56.25 et seq.), or “The Public Works Contractor
5 Registration Act,” P.L.1999, c.238 (C.34:11-56.48 et seq.):

6 “State wage, benefit and tax laws” means State wage and hour
7 laws and all of the following:

8 (1) The workers’ compensation law, R.S.34:15-1 et seq.;

9 (2) The “unemployment compensation law,” R.S.43:21-1 et
10 seq.;

11 (3) The “Temporary Disability Benefits Law,” P.L.1948, c.110
12 (C.43:21-25 et al.);

13 (4) P.L.2008, c.17 (C.43:21-39.1 et al.); and

14 (5) The “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
15 seq.

16 “When due” is the time agreed upon by the employer and
17 employee but in any case not greater than 16 days of completion of
18 the work as provided for under section 2 of P.L.1965, c.173
19 (C.34:11-4.2) and in accordance with a bi-monthly payment
20 schedule.

21 (cf: P.L.1999, c.90, s.10)

22
23 2. Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to
24 read as follows:

25 2. a. If the commissioner is notified pursuant to subsection g.
26 of this section by the Attorney General, the Attorney General’s
27 designee, or a court, of a conviction of an employer under
28 subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2), or if the
29 commissioner determines that an employer has failed, for one or
30 more of its employees, to maintain and report every record
31 regarding wages, benefits and taxes which the employer is required
32 to maintain and report pursuant to State wage, benefit and tax laws,
33 as defined in section 1 of this act, and has, in connection with that
34 failure to maintain or report the records, failed to pay wages,
35 benefits, taxes or other contributions or assessments as required by
36 those laws, the commissioner shall, as an alternative to, or in
37 addition to, any other actions taken in the enforcement of those
38 laws, notify the employer of the determination and have an audit of
39 the employer and any successor firm of the employer conducted not
40 more than 12 months after the determination.

41 b. If, in an audit conducted pursuant to subsection a. of this
42 section, the commissioner determines that the employer or any
43 successor firm to the employer has continued in its failure to
44 maintain or report records as required by those laws and continued
45 in its failure to pay wages, benefits, taxes or other contributions or
46 assessments as required by those laws, or if the commissioner is
47 notified pursuant to subsection g. of this section of a subsequent

1 conviction of the employer under subsection a. of section 10 of
2 P.L.1999, c.90 (C.2C:40A-2), the commissioner:

3 (1) May, after affording the employer or successor firm notice
4 and an opportunity for a hearing in accordance with the provisions
5 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
6 1 et seq.), issue a written determination directing any appropriate
7 agency to suspend any one or more licenses that are held by the
8 employer or successor firm, for a period of time determined by the
9 commissioner. In determining the length of a suspension, the
10 commissioner shall consider any of the following factors which are
11 relevant:

12 (a) The number of employees for which the employer or
13 successor firm failed to maintain or report required records and pay
14 required wages, benefits, taxes or other contributions or
15 assessments;

16 (b) The total amount of wages, benefits, taxes or other
17 contributions or assessments not paid by the employer or successor
18 firm;

19 (c) Any other harm resulting from the violation;

20 (d) Whether the employer or successor firm made good faith
21 efforts to comply with any applicable requirements;

22 (e) The duration of the violation;

23 (f) The role of the directors, officers or principals of the
24 employer or successor firm in the violation;

25 (g) Any prior misconduct by the employer or successor firm;
26 and

27 (h) Any other factors the commissioner considers relevant; and

28 (2) Shall conduct a subsequent audit or inspection of the
29 employer or any successor firm of the employer not more than 12
30 months after the date of the commissioner's written determination.

31 c. If, in the subsequent audit or inspection conducted pursuant
32 to subsection b. of this section, the commissioner determines that
33 the employer or successor firm has continued in its failure to
34 maintain or report records as required pursuant to State wage,
35 benefit and tax laws, as defined in section 1 of this act, and
36 continued in its failure to pay wages, benefits, taxes or other
37 contributions or assessments as required by those laws, or if the
38 commissioner is notified pursuant to subsection g. of this section of
39 a subsequent conviction of the employer under subsection a. of
40 section 10 of P.L.1999, c.90 (C.2C:40A-2), the commissioner, after
41 affording the employer or successor firm notice and an opportunity
42 for a hearing in accordance with the provisions of the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), shall issue a written determination directing any appropriate
45 agency to permanently revoke any one or more licenses that are
46 held by the employer or any successor firm to the employer and that
47 are necessary to operate the employer or successor firm.

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1 d. Upon receipt of any written determination of the
2 commissioner directing an agency to suspend or revoke a license
3 pursuant to this section, and notwithstanding any other law, the
4 agency shall immediately suspend or revoke the license.

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

23 f. If, in the course of an audit or inspection conducted pursuant
24 to this section, the commissioner discovers that an employee of the
25 employer or of any successor firm of the employer has failed to
26 provide compensation to the employee as required under any of the
27 State wage and hour laws as defined in section 10 of P.L.1999, c.90
28 (C.2C:40A-2), then the commissioner shall initiate a wage claim on
29 behalf of the employee pursuant to R.S.34:11-58.

30 g. Upon the conviction of an employer under subsection a. of
31 section 10 of P.L.1999, c.90 (C.2C:40A-2) the Attorney General,
32 the Attorney General's designee, or the court shall notify the
33 commissioner of the employer's conviction.

34 (cf: P.L.2009, c.194, s.2)

35
36 3. Section 10 of P.L.1965, c.173 (C.34:11-4.10) is amended to
37 read as follows:

38 10. a. Any employer who knowingly and willfully violates any
39 provision of P.L.1965, c.173 (34:11-4.1 et seq.), or who discharges,
40 or in any other manner discriminates against an employee because
41 the employee has made a complaint to that employee's employer, to
42 the commissioner, or to that employee's authorized representative,
43 that the employer has not paid the employee the full amount of
44 wages agreed upon or required by, and in the manner required by,
45 the provisions of article 1 of chapter 11 of Title 34 of the Revised
46 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
47 or because the employee has caused to be instituted or is about to
48 cause to be instituted any proceeding under or related to that article

1 or those acts, or because that employee has testified or is about to
2 testify in any proceeding under or relating to that article or those
3 acts, or because the employee has informed any person about rights
4 under State laws regarding wages and hours worked, shall be guilty
5 of a disorderly persons offense and, upon conviction for a violation,
6 shall be punished by a fine of not less than \$100 nor more than
7 \$1,000. Each day during which any violation of [this act] article 1
8 of chapter 11 of Title 34 of the Revised Statutes and all acts
9 supplementing that article (R.S.34:11-2 et al.) continues shall
10 constitute a separate and distinct offense. In the case of a discharge
11 or other discriminatory action against the employee which is in
12 violation of this subsection, the employer shall be required to offer
13 reinstatement in employment to the discharged employee, unless the
14 reinstatement is prohibited by law, and to correct the discriminatory
15 action, and also to pay to the employee, in full, all wages lost as a
16 result of that discharge or discriminatory action, plus any
17 reasonable cost of the action, and liquidated damages equal to 200
18 percent of the wages due, under penalty of contempt proceedings.
19 Taking an adverse action against an employee within ninety days of
20 the employee filing a complaint with the commissioner for a
21 violation of article 1 of chapter 11 of Title 34 of the Revised
22 Statutes and all acts supplementing that article (R.S.34:11-2 et al.)
23 shall raise a presumption that the action was a discriminatory action
24 taken in retaliation, which may be rebutted only by clear and
25 convincing evidence that the action was taken for other,
26 permissible, reasons. An employee complaint or other
27 communication need not make explicit reference to any section or
28 provision of any State law regarding wages and hours worked to
29 trigger the protections of this section.

30 b. As an alternative to or in addition to any other sanctions
31 provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et
32 seq.), when the Commissioner of Labor and Workforce
33 Development finds that an employer has violated that act, or taken
34 any discriminatory action against the employee in violation of
35 subsection a. of this section, the commissioner is authorized to
36 assess and collect administrative penalties, up to a maximum of
37 \$250 for a first violation and up to a maximum of \$500 for each
38 subsequent violation, specified in a schedule of penalties to be
39 promulgated as a rule or regulation by the commissioner in
40 accordance with the "Administrative Procedure Act," P.L.1968,
41 c.410 (C.52:14B-1 et seq.). When determining the amount of the
42 penalty imposed because of a violation, the commissioner shall
43 consider factors which include the history of previous violations by
44 the employer, the seriousness of the violation, the good faith of the
45 employer and the size of the employer's business. No
46 administrative penalty shall be levied pursuant to this section unless
47 the Commissioner of Labor and Workforce Development provides
48 the alleged violator with notification of the violation and of the
49 amount of the penalty by certified mail and an opportunity to

1 request a hearing before the commissioner or his designee within 15
2 days following the receipt of the notice. If a hearing is requested,
3 the commissioner shall issue a final order upon such hearing and a
4 finding that a violation has occurred. If no hearing is requested, the
5 notice shall become a final order upon expiration of the 15-day
6 period. Payment of the penalty is due when a final order is issued
7 or when the notice becomes a final order. Any penalty imposed
8 pursuant to this section may be recovered with costs in a summary
9 proceeding commenced by the commissioner pursuant to **["the**
10 **penalty enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty
11 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
12 Any sum collected as a fine or penalty pursuant to this section shall
13 be applied toward enforcement and administration costs of the
14 Division of Workplace Standards in the Department of Labor and
15 Workforce Development.

16 c. If any employer fails to pay the full amount of wages to an
17 employee agreed to or required by, or in the manner required by,
18 the provisions of article 1 of chapter 11 of Title 34 of the Revised
19 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
20 the employee may recover in a civil action the full amount of any
21 wages due, or any wages due because of any discriminatory action
22 in violation of subsection a. of this section, plus an amount of
23 liquidated damages equal to 200 percent of the wages due, together
24 with costs and reasonable attorney's fees as are allowed by the
25 court, except that if there is an agreement of the employee to accept
26 payment of the unpaid wages supervised by the commissioner
27 pursuant to section 9 of P.L.1965, c.173 (C.34:11-4.9) or R.S.34:11-
28 58, the liquidated damages shall be equal to 200 percent of wages
29 that were due prior to the supervised payment. Any agreement by
30 the employee to work for, or accept, wages paid which are less than
31 the amount agreed to or required by law, or paid in a manner other
32 than that required by article 1 of chapter 11 of Title 34 of the
33 Revised Statutes and all acts supplementing that article (R.S.34:11-
34 2 et al.), shall be no defense to the action. The employee shall be
35 entitled to maintain the action for and on behalf of other similarly
36 situated employees, or designate an agent or representative to
37 maintain the action for and on behalf of all similarly situated
38 employees. The employee may bring the action to recover unpaid
39 wages pursuant to this section in the Superior Court, and may bring
40 the action in the Division of Small Claims of the Superior Court,
41 Law Division, Special Civil Part if the sum of the unpaid wages and
42 the liquidated damages does not exceed the jurisdictional limits of
43 the Division of Small Claims. Upon the request of any employee
44 not paid the full wages agreed upon or required by law and in the
45 manner required by the provisions of article 1 of chapter 11 of Title
46 34 of the Revised Statutes and all acts supplementing that article
47 (R.S.34:11-2 et al.), the commissioner may take an assignment of
48 the wage claim in trust for the assigning employee and may bring
49 any legal action necessary to collect the claim, and the employer
50 shall be required to pay to the employee the unpaid wages and

1 liquidated damages equal to 200 percent of the amount of the
2 unpaid wages and pay to the commissioner the costs and reasonable
3 attorney's fees as determined by the court.

4 (cf: P.L.1991, c.205, s.3)

5

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

8 25. a. Any employer who discharges or in any other manner
9 discriminates against any employee because the employee has made
10 any complaint to his employer, to the commissioner, the director or
11 to their authorized representatives, or to a representative of the
12 employee, that he has not been paid wages in accordance with the
13 provisions of this act, or because such employee has caused to be
14 instituted or is about to cause to be instituted any proceeding under
15 or related to this act, or because such employee has testified or is
16 about to testify in any such proceeding, or because such employee
17 has served or is about to serve on a wage board, or because the
18 employee has informed any person about rights under State laws
19 regarding wages and hours of work, shall be guilty of a disorderly
20 persons offense and shall, upon conviction therefor, be fined not
21 less than \$100 nor more than \$1,000. Such employer shall be
22 required, as a condition of such judgment of conviction, to offer
23 reinstatement in employment to any such discharged employee,
24 unless the reinstatement is prohibited by law, and to correct any
25 such discriminatory action, and also to pay to any such employee in
26 full, all wages lost as a result of such discharge or discriminatory
27 action and an additional amount of liquidated damages equal to 200
28 percent of the wages due, under penalty of contempt proceedings
29 for failure to comply with such requirement. Taking an adverse
30 action against an employee within ninety days of the employee
31 filing a complaint with the commissioner for a violation of
32 P.L.1966, c.113 (C.34:11-56a et seq.) shall raise a presumption that
33 the action was a discriminatory action taken in retaliation, which
34 may be rebutted only by clear and convincing evidence that the
35 action was taken for other, permissible, reasons. An employee
36 complaint or other communication need not make explicit reference
37 to any section or provision of State law regarding wages or hours
38 worked to trigger the protections of this section.

39 b. As an alternative to or in addition to any other sanctions
40 provided by law for violations of P.L.1966, c.113 (C.34:11-56a et
41 seq.), when the Commissioner of Labor and Workforce
42 Development finds that an employer has violated that act, or taken
43 any discriminatory action against the employee in violation of
44 subsection a. of this section, the commissioner is authorized to
45 assess and collect administrative penalties, up to a maximum of
46 \$250 for a first violation and up to a maximum of \$500 for each
47 subsequent violation, specified in a schedule of penalties to be
48 promulgated as a rule or regulation by the commissioner in
49 accordance with the "Administrative Procedure Act," P.L.1968,

1 c.410 (C.52:14B-1 et seq.). When determining the amount of the
2 penalty imposed because of a violation, the commissioner shall
3 consider factors which include the history of previous violations by
4 the employer, the seriousness of the violation, the good faith of the
5 employer and the size of the employer's business. No
6 administrative penalty shall be levied pursuant to this section unless
7 the Commissioner of Labor and Workforce Development provides
8 the alleged violator with notification of the violation and of the
9 amount of the penalty by certified mail and an opportunity to
10 request a hearing before the commissioner or his designee within 15
11 days following the receipt of the notice. If a hearing is requested,
12 the commissioner shall issue a final order upon such hearing and a
13 finding that a violation has occurred. If no hearing is requested, the
14 notice shall become a final order upon expiration of the 15-day
15 period. Payment of the penalty is due when a final order is issued
16 or when the notice becomes a final order. Any penalty imposed
17 pursuant to this section may be recovered with costs in a summary
18 proceeding commenced by the commissioner pursuant to **["the**
19 **penalty enforcement law" (N.J.S.2A:58-1 et seq.)]** the "Penalty
20 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
21 Any sum collected as a fine or penalty pursuant to this section shall
22 be applied toward enforcement and administration costs of the
23 Division of Workplace Standards in the Department of Labor and
24 Workforce Development.
25 (cf: P.L.1991, c.205, s.22)

26
27 5. Section 26 of P.L.1966, c.113 (C.34:11-56a25) is amended
28 to read as follows:

29 26. If any employee is paid by an employer less than the
30 minimum fair wage to which **[such]** the employee is entitled under
31 the provisions of **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or
32 by virtue of a minimum fair wage order **[such]**, the employee may
33 recover in a civil action the full amount of **[such]** that minimum
34 wage less any amount actually paid to him or her by the employer
35 **[together with]** and an additional amount equal to 200 percent of
36 the amount of the unpaid minimum wages as liquidated damages,
37 plus costs and **[such]** reasonable attorney's fees as **[may be**
38 **allowed]** determined by the court, **[and any]** except that if there is
39 an agreement of the employee to accept payment of the unpaid
40 wages or compensation supervised by the commissioner pursuant to
41 section 24 of P.L.1966, c.113 (C.34:11-56a23) or R.S.34:11-58, the
42 liquidated damages shall be equal to 200 percent of wages that were
43 due prior to the supervised payment. Any agreement between
44 **[such]** the employee and the employer to work for less than **[such]**
45 the minimum fair wage shall be no defense to the action. An
46 employee shall be entitled to maintain **[such]** the action for and on
47 behalf of himself or other employees similarly situated, and **[such]**

1 the employee and employees may designate an agent or
2 representative to maintain **【such】** the action for and on behalf of all
3 employees similarly situated. The employee may bring the action
4 to recover unpaid minimum wages pursuant to this section in the
5 Superior Court, and may bring the action in the Division of Small
6 Claims of the Superior Court, Law Division, Special Civil Part if
7 the sum of the amount of unpaid minimum wages and the amount of
8 liquidated damages does not exceed the jurisdictional limits of the
9 Division of Small Claims.

10 At the request of any employee paid less than the minimum wage
11 to which **【such】** the employee was entitled under the provisions of
12 **【this act】** P.L.1966, c.113 (C.34:11-56a et seq.) or under an order,
13 the commissioner may take an assignment of the wage claim in trust
14 for the assigning employee and may bring any legal action
15 necessary to collect the claim, and the employer shall be required to
16 pay to the employee the unpaid wages and liquidated damages equal
17 to 200 percent the amount of the unpaid wages and pay to the
18 commissioner the costs and **【such】** reasonable attorney's fees as
19 **【may be allowed】** determined by the court.

20 (cf: P.L.1966, c.113, s.26)

21

22 6. Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is amended
23 to read as follows:

24 1. No claim for unpaid minimum wages, unpaid overtime
25 compensation, or other damages under this act shall be valid with
26 respect to any such claim which has arisen more than **【2】** six years
27 prior to the commencement of an action for the recovery thereof. In
28 determining when an action is commenced, the action shall be
29 considered to be commenced on the date when a complaint is filed
30 with the Commissioner of the Department of Labor and **【Industry】**
31 Workforce Development or the Director of **【the】** Wage and Hour
32 **【Bureau】** Compliance, and notice of such complaint is served upon
33 the employer; or, where an audit by the Department of Labor and
34 **【Industry】** Workforce Development discloses a probable cause of
35 action for unpaid minimum wages, unpaid overtime compensation,
36 or other damages, and notice of such probable cause of action is
37 served upon the employer by the Director of **【the】** Wage and Hour
38 **【Bureau】** Compliance; or where a cause of action is commenced in
39 a court of appropriate jurisdiction.

40 (cf: P.L.1967, c.216, s.1)

41

42 7. R.S.34:11-57 is amended to read as follows:

43 34:11-57. As used in this article:

44 "Commissioner" means the Commissioner of Labor and
45 **【Industry】** Workforce Development or any person or persons in the
46 department designated in writing by him for the purposes of this
47 article.

1 “Community-based organization” means a public, or nonprofit
2 private, organization funded with public or private funds, or both,
3 that provides services to day laborers, migrant laborers, temporary
4 laborers, low wage workers, or any other type of employee.

5 “Department” means the Department of Labor and Workforce
6 Development.

7 "Employee" means any natural person who works for another for
8 hire.

9 "Employer" means any person, partnership, firm or corporation
10 employing another for hire.

11 “Legal services organization” means a public, or nonprofit
12 private, organization funded with public or private funds, or both,
13 that provides counseling or advice related to wage protection laws,
14 preparation of legal documents, or representation of any person
15 before a court or administrative agency.

16 “State wage and hour laws” means article 1 of chapter 11 of Title
17 34 of the Revised Statutes and all acts supplementing that article
18 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
19 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
20 and article 3 of chapter 11 of Title 34 of the Revised Statutes
21 (R.S.34:11-57 et seq.), but “State wage and hour laws” do not
22 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150
23 (C.34:11-56.25 et seq.), or "The Public Works Contractor
24 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

25 "Wages" means any moneys due an employee from the employer
26 whether payable by the hour, day, week, semimonthly, monthly or
27 yearly and shall include commissions, bonus, piecework
28 compensation and any other benefits arising out of an employment
29 contract.

30 (cf: P.L.1964, c.92, s.1)

31

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

33 34:11-58. a. An employee may file a claim for wages against an
34 employer under this section or any of the other State wage and
35 hours laws for wages owed related to work performed up to six
36 years prior to the date the claim for wages is filed.

37 b. An employer found to owe an employee wages shall pay the
38 employee the wages owed plus liquidated damages equal to 200%
39 of the wages owed, exclusive of any costs or fees.

40 c. The commissioner is authorized and empowered to
41 investigate any claim for wages due an employee and in such
42 investigation may summon the defendant, subpoena witnesses,
43 administer oaths, take testimony and shall upon such proceeding
44 make a decision or award **【when the sum in controversy, exclusive**
45 **of costs, does not exceed \$30,000.00】.**

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

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

5 d. Upon an investigation of a wage claim initiated pursuant to
6 this section or any of the other State wage and hours laws, if an
7 employer fails to provide sufficient employee records, as required
8 to be kept under any State wage and hour laws, there shall be a
9 rebuttable presumption that the employee worked for the employer
10 for the period of time and for the amount of wages as alleged in the
11 wage claim.

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

27 f. Upon issuing a decision, under this section or any of the
28 other State wage and hours laws, finding wages due to an employee
29 in an amount equal to or greater than \$5,000, the commissioner
30 shall:

31 (1) inform the employer of the commissioner's intention to
32 conduct an audit of the employer or any successor firm of the
33 employer pursuant to section 2 of P.L.2009, c.194 (C.34:1A-1.12);
34 and

35 (2) notify the Division of Taxation in the Department of the
36 Treasury of the decision and recommend that the division conduct
37 an audit of the employer to ensure the proper withholding and
38 payment of payroll and other taxes by the employer.

39 g. No payment of an amount of wages owed or related
40 damages, including wages or damages related to retaliation, shall be
41 required under the provision of this section, or under the provisions
42 of any of the other State wage and hour laws, which results in a
43 violation paying wages owed or damages more than one time for the
44 same violation.

45 (cf: P.L.2006, c.25, s.1)

46
47 9. (New section) a. If an employer fails to comply with a final
48 determination of the commissioner or a judgment of a court,

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

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

11 (2) issue a stop work order against the violators requiring the
12 cessation of all business operations of the violator. The stop work
13 order may only be issued against the individual or entity found to be
14 in violation, and only as to the specific place of business or
15 employment for which the violation exists. The stop work order
16 shall be effective when served upon the violator or at a place of
17 business or employment by posting a copy of the stop work order in
18 a conspicuous location at the place of business or employment. The
19 stop work order shall remain in effect until the commissioner issues
20 an order releasing the stop work order upon a finding that the
21 violation has been corrected. As a condition of release of a stop-
22 work order under this section, the commissioner may require the
23 employer against whom the stop-work order had been issued to file
24 with the department periodic reports for a probationary period of
25 two years.

26 b. Stop work orders and any penalties imposed under a stop
27 work order against a corporation, partnership, or sole proprietorship
28 shall be effective against any successor entity that has one or more
29 of the same principals or officers as the corporation, partnership, or
30 sole proprietorship against which the stop work order was issued
31 and that is engaged in the same or equivalent trade or activity.

32 c. Any employee affected by a stop work order issued pursuant
33 to this section shall be paid by the employer for the first ten days of
34 work lost because of the stop work order.

35 d. A rebuttable presumption that an employer has established a
36 successor entity shall arise if the two share at least three of the
37 following capacities or characteristics:

- 38 (1) perform similar work;
- 39 (2) occupy the same premises;
- 40 (3) have the same telephone or fax number;
- 41 (4) have the same email address or Internet website;
- 42 (5) perform work in the same geographical area;
- 43 (6) employ substantially the same work force;
- 44 (7) utilize the same tools and equipment;
- 45 (8) employ or engage the services of any person or persons
46 involved in the direction or control of the other; or
- 47 (9) list substantially the same work experience.

1 10. (New section) a. A client employer and a labor contractor
2 providing workers to the client employer shall be subject to joint
3 and several liability and shall share civil legal responsibility for any
4 violations of the provisions of State wage and hour laws or
5 violations of the provisions of section 10 of P.L.1999, c.90
6 (C.2C:40A-2) regarding compliance with State wage and hour laws,
7 including provisions regarding retaliatory actions against employees
8 for exercising their rights under any of those laws, and both may be
9 subject to any remedy provided for violations of those laws. A
10 client employer shall not shift to the labor contractor any legal
11 duties or liabilities under the provisions of the “Worker Health and
12 Safety Act,” P.L.1965, c.154 (C.34:6A-1 et seq.) or “The Worker
13 and Community Right to Know Act,” P.L.1983, c.315 (C.34:5A-1
14 et seq.) with respect to workers supplied by the labor contractor. A
15 waiver of the provisions of this section is contrary to public policy,
16 and is void and unenforceable.

17 b. This section shall not be interpreted as:

18 (1) imposing individual liability on a homeowner for labor or
19 services received at the home or the owner of a home-based
20 business for labor or services received at the home; or

21 (2) restricting or limiting the rights of a client employer to
22 recover from a labor contractor any expense to the client employer,
23 or the rights of a labor contractor to recover from a client employer
24 any expense to the labor contractor, resulting from any violation by
25 the labor contractor or client employer of the provisions of State
26 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-
27 2), or restricting or limiting the provisions in contracts between
28 client employers and labor contractors regarding the recovery of
29 expenses pursuant to this paragraph.

30 c. As used in this section:

31 “Client employer” means a business entity, regardless of its
32 form, that obtains or is provided workers, directly from a labor
33 contractor or indirectly from a subcontractor, to perform labor or
34 services within its usual course of business.

35 “Labor contractor” means any individual or entity that supplies,
36 either with or without a contract, directly or indirectly, a client
37 employer with workers to perform labor or services within the
38 client employer’s usual course of business, except that “labor
39 contractor” does not include a bona fide labor organization or
40 apprenticeship program, or a hiring hall operated pursuant to a
41 collective bargaining agreement.

42 “Usual course of business” means the regular and customary
43 work of a business, performed within or upon the premises or
44 worksite of the client employer, or any other place of business of
45 the client employer for which services or labor are performed.

46

47 11. (New section) Each employer shall provide each current
48 employee and each newly hired employee of the employer, a written

1 copy of the statement produced by the department pursuant to
2 subsection c. of section 12 of P.L. , c. (C.) (pending before
3 the Legislature as this bill) of the employee's rights under the
4 provisions of State wage and hour laws and the provisions of
5 section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation of
6 how to file a claim or take an action pursuant to those laws.

7
8 12. (New section) The department, for the purpose of supporting
9 the enforcement of the provisions of State wage and hour laws and
10 the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), shall:

11 a. contract with community-based organizations and legal
12 services organizations to disseminate information to day laborers,
13 migrant laborers, temporary laborers, or any other type of employee
14 concerning the protections afforded by State wage and hour laws
15 and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by
16 which an individual may take actions under those laws;

17 b. contract with community-based organizations and legal
18 services organizations to investigate, prepare, and if necessary,
19 represent employees in actions under State wage and hour laws or
20 section 10 of P.L.1999, c.90 (C.2C:40A-2), including actions under
21 those laws concerning retaliation against employees; and

22 c. produce, and make available to the public on the website of
23 the department, a statement of employee rights under the provisions
24 of State wage and hour laws and the provisions of section 10 of
25 P.L.1999, c.90 (C.2C:40A-2), with an explanation of how to file a
26 claim or take an action pursuant to those laws.

27 The contracts entered into between the department and
28 community-based organizations and legal services organizations
29 pursuant to this section shall require that the organizations make all
30 services accessible to persons with limited English proficiency and
31 shall provide that, in any case in which the community-based or
32 legal services organization assists or represents employees pursuant
33 to subsection b. of this section, 50 percent of any fees or penalties
34 collected by the department shall be paid to the organization for
35 services provided pursuant to contracts entered into pursuant to this
36 section, and that payment shall be regarded as an enforcement and
37 administrative cost of the Division of Workplace Standards of the
38 department.

39 The department, and any community-based organization or legal
40 services organization contracting with the department pursuant to
41 this section, shall provide any individual seeking assistance to file a
42 complaint or take an action regarding unpaid wages with a
43 description of all of the applicable remedies available to the
44 individual under State wage and hour laws and section 10 of
45 P.L.1999, c.90 (C.2C:40A-2), including the individual's right to
46 obtain liquidated damages, and that that right to damages is waived
47 if the individual agrees to accept payment of the unpaid wages
48 supervised by the commissioner.

1 13. (New section) a. The commissioner, in consultation with the
2 Administrative Director of the Courts and the Attorney General,
3 shall compile and prominently place on a website, maintained by
4 the department and available to the public, an annual report
5 evaluating the effectiveness and efficiency of the enforcement and
6 administration of wage claims and wage collections. The report
7 shall include, but not be limited to:

8 (1) the number of complaints, investigations, prosecutions,
9 dispositions, and business license suspensions and revocations, the
10 number and amount of penalties, the amount of wages recovered,
11 and the number of workers effected;

12 (2) an enumeration and description of all community-based and
13 legal services organizations contracted by the department to support
14 the enforcement; and

15 (3) recommendations for strengthening the implementation and
16 enforcement of P.L. , c. (C.) (pending before the
17 Legislature as this bill).

18 b. The commissioner, in consultation with the Administrative
19 Director of the Courts and the Attorney General, shall compile and
20 prominently place on a website, maintained by the department and
21 available to the public, the following information regarding each
22 wage claim in which an employer was found to have been in
23 violation of one or more State wage and hour laws in a final
24 determination by the commissioner or a judgement of a court made
25 during the preceding period of not less than 12 months:

26 (1) the name and address of the employer;

27 (2) the nature of the claim, including whether it is a claim for
28 one or more of the following: unpaid wages; failure to pay the
29 minimum wage; failure to pay required overtime; or retaliation
30 against an employee in connection with State wage and hour laws;

31 (3) the number of affected employees, and the amount of wages
32 found owed; and

33 (4) any findings, penalties, and business license suspensions or
34 revocations that resulted from the wage claim.

35 The information on a claim shall be placed on the website not
36 more than 30 days after the final determination or judgement is
37 made.

38
39 14. This act shall take effect immediately.
40
41

42 STATEMENT
43

44 This bill assists workers aggrieved by certain violations of laws
45 regarding the payment of wages by strengthening enforcement
46 procedures, remedies and a variety of criminal, civil and
47 administrative sanctions against the violators.

1 With respect to criminal sanctions, the bill revises the current
2 provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), to
3 strengthen enforcement procedures and criminal sanctions against
4 employers who fail to pay wages, compensation or benefits required
5 by law or retaliate against employees who file complaints regarding
6 those violations.

7 Under the bill, a violator is required to pay the employee wages
8 owed, plus liquidated damages equal to 200% of the wages owed.
9 In addition to the damages, an employer found guilty of a violation
10 is fined \$500 plus a penalty of 20% of any wages owed for a first
11 offense, and a fine of \$1,000 plus a penalty of 20% of any wages
12 owed for subsequent offenses. The bill also provides that an
13 employer who is found to have retaliated against an employee for
14 bringing a claim under the statute commits a disorderly persons
15 offense and is liable to the employee for wages lost because of the
16 retaliation plus damages equal to 200% of those wages.

17 Jurisdiction for a case, and the location for filing a complaint, is
18 based on the location where the employee was hired or employed.
19 If the employer fails to provide wage records required by law, it is
20 presumed that the employer owes the amount of wages alleged,
21 unless the employer demonstrates good cause for the failure.

22 In addition to its enhancements of criminal procedures and
23 sanctions, the bill expands the enforcement provisions available to
24 the Commissioner of Labor and Workforce Development and the
25 remedies available to aggrieved workers.

26 The bill permits a worker to file a claim with the commissioner
27 for wages owed to the worker related to work performed up to six
28 years prior to the filing of the claim. An employer found to owe
29 wages must pay the employee the wages owed plus liquidated
30 damages equal to 200% of the owed wages. If an employer fails to
31 provide the required employee records there is a rebuttable
32 presumption that the employer owes the amount of wages alleged.

33 Upon issuing a decision finding wages due to a worker are equal
34 to or greater than \$5,000, the commissioner must inform the
35 employer that the commissioner will conduct an audit of the
36 employer or any successor firm of the employer pursuant to section
37 2 of P.L.2009, c.194 (C.34:1A-1.12), and notify the Division of
38 Taxation of the decision and recommend that the division conduct
39 an audit of the employer to ensure the proper withholding and
40 payment of payroll and other taxes.

41 The bill further enhances enforcement procedures and remedies
42 by extending certain remedies currently available to workers who
43 are victims of violations of the State's minimum wage law to
44 workers who are victims of violations of the State's wage payment
45 laws. Specifically, the bill extends the remedies provided to
46 employees by the minimum wage law in cases of employer
47 retaliation to cover employer retaliation under the wage payment
48 law, and provides the same opportunity for workers aggrieved by

1 violations of the wage payment law to bring a civil action as
2 workers are provided for violations of the minimum wage law.

3 In addition, the bill provides the following two new remedies for
4 violations of both the wage payment law and the minimum wage
5 law:

6 1. The employee may bring the action in small claims court if
7 the unpaid wages and damages do not exceed court jurisdictional
8 limits; and

9 2. An employee who prevails in a civil action may recover
10 liquidated damages equal to 200% of the unpaid wages.

11 The bill also amends section 2 of P.L.2009, c.194 (C.34:1A-
12 1.12), which is the law that directs the commissioner, in the case of
13 employers who fail to maintain required records and make required
14 tax, benefit and wage payments, to conduct audits of employers and
15 suspend or revoke business licenses of employers who are found in
16 subsequent audits to have continued the violations. The bill amends
17 that law to require the commissioner to use that law's remedies
18 when notified by the Attorney General of a conviction under section
19 10 of P.L.1999, c.90 (C.2C:40A-2). In addition, if an employer
20 fails to comply with a final determination of the commissioner or a
21 court judgement to pay wages owed or related damages within ten
22 days, the commissioner may order license suspensions, or issue a
23 stop work order, until the failure is corrected.

24 The bill makes a client employer and a labor contractor
25 providing workers to the client employer subject to joint and several
26 liability for violations of wage and hour laws. The bill provides
27 that nothing in the bill shall be interpreted as restricting or limiting
28 the rights of a client employer to recover from a labor contractor
29 any expense to the client employer, or the rights of a labor
30 contractor to recover from a client employer any expense to the
31 labor contractor, or restricting or limiting the provisions in contracts
32 between client employers and labor contractors regarding the
33 recovery of expenses.

34 Because wage payment violations especially impact vulnerable
35 employees such as day laborers and immigrants, who often suffer
36 from low wages and the fear of retaliation, the bill's definitions of
37 "employee" reaffirm that the protections of the State's wage and
38 hour laws apply to all employees, with no exclusions based on
39 citizenship status.

40 The bill directs the Department of Labor and Workforce
41 Development to contract with community-based and legal services
42 organizations to disseminate information to workers and assist
43 workers aggrieved by violations of State wage and hour laws. The
44 bill requires that the contracts provide that the organizations make
45 all services accessible to persons with limited English proficiency
46 and that, in any case in which the community-based or legal
47 services organization assists or represents employees, 50% of any

S1790 WEINBERG

20

1 fees or penalties collected by the department be paid to the
2 organization.

3 The bill requires employers to provide current and newly hired
4 employees a written copy of the statement produced by the
5 department of the employee's rights under the bill, with an
6 explanation of how to file a claim or take other actions with regard
7 to wage violations.

8 The bill requires the commissioner, in consultation with the
9 Administrative Director of the Courts and the Attorney General, to
10 produce an annual report on the enforcement of wage and hour laws
11 with recommendations to improve enforcement, and place on a
12 website information regarding each wage claim in which an
13 employer was found to have been in violation of one or more State
14 wage and hour laws during the preceding period of not less than 12
15 months.

16 The bill exempts violations of the "New Jersey Prevailing Wage
17 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), and "The Public
18 Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-
19 56.48 et seq.), from the remedies of the bill. The bill also exempts
20 from its provisions construction industry employers and workers
21 who have collective bargaining agreements. Finally, the bill
22 expressly provides that violations of the building services prevailing
23 wage law, P.L.2005, c.379 (C.34:11-56.58 et seq.), are subject to
24 the remedies of the bill.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1790

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 2019

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1790, with committee amendments.

This bill, as amended assists workers aggrieved by certain violations of laws regarding the payment of wages by strengthening enforcement procedures, remedies and a variety of criminal, civil and administrative sanctions against the violators.

Under the bill, as amended, upon conviction for a first violation, a employer shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second violation, be punished by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. Upon conviction for a third or subsequent violation, an employer shall be guilty of a crime of the fourth degree and be punished by a fine of not less than \$2,000 nor more than \$10,000 or by imprisonment for up to 18 months or by both the fine and imprisonment.

Additionally, under the bill, a violator can be required to pay the employee wages owed, plus liquidated damages equal to 200% of the wages owed in a civil action brought by the employee. The bill also provides that an employer who is found to have retaliated against an employee for bringing a claim under the statute commits a disorderly persons offense and is liable to the employee for wages lost because of the retaliation plus damages equal to 200% of those wages.

In addition to its enhancements of criminal procedures and sanctions, the bill expands the enforcement provisions available to the Commissioner of Labor and Workforce Development and the remedies available to aggrieved workers.

The bill permits a worker to file a claim with the commissioner for wages owed to the worker related to work performed up to six years prior to the filing of the claim. An employer found to owe wages must pay the employee the wages owed plus liquidated damages equal to 200% of the owed wages. If an employer fails to provide the required employee records there is a rebuttable presumption that the employer owes the amount of wages alleged. As amended, the bill provides that an employer that does not have sufficient employee records due to

record destruction as a result of a natural disaster is not subject to the rebuttable presumption that the employee worked for the employer for the period of time and for the amount of wages as alleged in the wage claim.

Upon issuing a decision finding wages due to a worker are equal to or greater than \$5,000, the commissioner must inform the employer that the commissioner will conduct an audit of the employer or any successor firm of the employer pursuant to section 2 of P.L.2009, c.194 (C.34:1A-1.12), and notify the Division of Taxation of the decision and recommend that the division conduct an audit of the employer to ensure the proper withholding and payment of payroll and other taxes.

The bill further enhances enforcement procedures and remedies by extending certain remedies currently available to workers who are victims of violations of the State's minimum wage law to workers who are victims of violations of the State's wage payment laws. Specifically, the bill extends the remedies provided to employees by the minimum wage law in cases of employer retaliation to cover employer retaliation under the wage payment law, and provides the same opportunity for workers aggrieved by violations of the wage payment law to bring a civil action as workers are provided for violations of the minimum wage law.

In addition, the bill provides the following two new remedies for violations of both the wage payment law and the minimum wage law:

1. The employee may bring the action in small claims court if the unpaid wages and damages do not exceed court jurisdictional limits; and
2. An employee who prevails in a civil action may recover liquidated damages equal to 200% of the unpaid wages.

The bill also amends section 2 of P.L.2009, c.194 (C.34:1A-1.12), which is the law that directs the commissioner, in the case of employers who fail to maintain required records and make required tax, benefit and wage payments, to conduct audits of employers and suspend or revoke business licenses of employers who are found in subsequent audits to have continued the violations. The bill amends that law to require the commissioner to use that law's remedies when notified by the Attorney General of a conviction under section 10 of P.L.1999, c.90 (C.2C:40A-2). In addition, the bill provides that if an employer fails to comply with a final determination of the commissioner or a court judgement to pay wages owed or related damages within 10 days, the commissioner may order license suspensions, or issue a stop work order, until the failure is corrected.

The bill makes a client employer and a labor contractor providing workers to the client employer subject to joint and several liability for violations of wage and hour laws. The bill provides that nothing in the bill shall be interpreted as restricting or limiting the rights of a client employer to recover from a labor contractor any expense to the client

employer, or the rights of a labor contractor to recover from a client employer any expense to the labor contractor, or restricting or limiting the provisions in contracts between client employers and labor contractors regarding the recovery of expenses.

Because wage payment violations especially impact vulnerable employees such as day laborers and immigrants, who often suffer from low wages and the fear of retaliation, the bill's definitions of "employee" reaffirm that the protections of the State's wage and hour laws apply to all employees, with no exclusions based on citizenship status.

The bill directs the Department of Labor and Workforce Development to contract with community-based and legal services organizations to disseminate information to workers and assist workers aggrieved by violations of State wage and hour laws. The bill requires that the contracts provide that the organizations make all services accessible to persons with limited English proficiency and that, in any case in which the community-based or legal services organization assists or represents employees, 50% of any fees or penalties collected by the department be paid to the organization.

The bill requires employers to provide current and newly hired employees a written copy of the statement produced by the department of the employee's rights under the bill, with an explanation of how to file a claim or take other actions with regard to wage violations.

The bill requires the commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, to produce an annual report on the enforcement of wage and hour laws with recommendations to improve enforcement, and place on a website information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws during the preceding period of not less than 12 months.

The bill exempts violations of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), and "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), from the remedies of the bill. Finally, the bill expressly provides that violations of the building services prevailing wage law, P.L.2005, c.379 (C.34:11-56.58 et seq.), are subject to the remedies of the bill.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) omit section 1 in its entirety, which would have added certain provisions of the bill to the section of criminal law concerning the failure to pay wages and benefits;

(2) increase the fine under the labor laws for a first violation from \$100 to a minimum of \$500, or by imprisonment for at least 10 days, or both, and additional penalties for subsequent violations;

(3) change timeframe for continuing violations from recurring daily to weekly;

(4) limit investigations by the department to proceedings wherein the sum in controversy does not exceed \$50,000;

(5) modify the definition of a successor entity of an employer;

(6) provide that an employer that does not have sufficient employee records due to record destruction as a result of a natural disaster is not subject to the rebuttable presumption that the employee worked for the employer for the period of time and for the amount of wages as alleged in the wage claim; and

(7) renumber the sections accordingly and make minor technical changes.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill will result in indeterminate annual increases in administrative, enforcement, and incarceration expenditures to the State; and indeterminate annual increases in State revenue collected from certain new and expanded criminal and administrative penalties.

STATEMENT TO
[First Reprint]
SENATE, No. 1790

with Senate Floor Amendments
(Proposed by Senator WEINBERG)

ADOPTED: MARCH 14, 2019

These amendments:

1. Amend section 2 of P.L.2009, c.194 (C.34:1A-1.12) to increase the number of labor laws for which violations by an employer may lead, under that law, to audits and, upon repeat violations, suspension and revocation of business licenses of the employer.

2. Expressly state that the disorderly persons offense for violations of the wage payment law, P.L.1965, c.173 (C.34:11-4.1 et seq.) applies to knowing failure to fully pay wages agreed to or required by article 1 of chapter 11 of Title 34 of the Revised Statute and all acts supplementing that article, and to any employer retaliation against an employer seeking relief under those laws.

3. Reduce the punishments under the wage payment laws and the minimum wage law, P.L.1966, c.113 (C.34:11-56a et seq.) for a third and subsequent violation from a fine of not less than \$2,000 or more than \$10,000 and imprisonment of up to 18 months down to a fine of not less than \$500 or more than \$1,000 and imprisonment of not less than 10 days or more than 100 days, and remove the requirement that the violator pay the costs of action.

4. Specify that in a case of an employee taking a civil action under the bill against an employer who takes an adverse action against an employee seeking relief under those laws, there is a rebuttable presumption that the adverse action is retaliation if it occurs within 90 days of the seeking of relief, and the court shall require the employer to offer reinstatement if the employee was discharged.

5. Have the bill's extension of the statute of limitations to six years apply to unlawful discharge or other retaliation.

6. Establish the crime of a "pattern of wage non-payment" when an employer knowingly violates, for a third or subsequent time, a range of specified laws regarding wage payment, minimum wage, and theft when the property stolen is unpaid wages. The crime of pattern of wage non-payment is deemed a crime of the third degree, which is subject to punishment of between three and five years of imprisonment and up to \$15,000 in fines.

7. Change the rate of liquidated damages provided in the bill from 200 percent of wages due or lost to not more than 200 percent of those wages in criminal actions and other actions taken by the department, but retains the rate of 200 percent in civil actions taken by aggrieved employees.

8. Eliminate the provision that contracts by the department with community-based organizations or legal services organizations may authorize the organizations to investigate, prepare or represent workers in wage actions and eliminate the provision that organizations be awarded 50 percent of fees or penalties collected in wage actions.

STATEMENT TO
[Second Reprint]
SENATE, No. 1790

with Assembly Floor Amendments
(Proposed by Assemblywoman QUIJANO)

ADOPTED: JUNE 10, 2019

These amendments:

1. Provide that with respect to a civil action taken by an employee under the bill, the payment of liquidated damages is not required for a first violation by an employer who demonstrates that the employer's action was taken in good faith with reasonable grounds for believing that the action was not a violation, and the employer admits the violation and pays the amount owed within 30 days;
2. Provide that, for subsequent violations, the liquidated damages are for an amount of not more than 200 percent of the wages due, instead of requiring that they are always a full 200 percent of the wages due; and
3. Remove all reference to small claims courts.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 1790

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: MARCH 29, 2019

SUMMARY

- Synopsis:** Concerns law regarding failure to pay wages.
- Type of Impact:** Annual expenditure and revenue increases to State General Fund.
- Agencies Affected:** Department of Labor and Workforce Development; Department of Law and Public Safety; and Judiciary.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill will result in indeterminate annual increases in administrative, enforcement, and incarceration expenditures to the State, and indeterminate annual increases in State revenue collected from certain new and expanded criminal and administrative penalties.

BILL DESCRIPTION

This bill assists workers aggrieved by certain violations of laws regarding the payment of wages by strengthening enforcement procedures, remedies and a variety of criminal, civil and administrative sanctions against the violators.

Upon conviction for a first violation of a wage payment law subject to the bill, an employer is punishable by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment. Upon conviction for a second or subsequent violation, an employer is punishable by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment.

Additionally, a violator can be required to pay the employee wages owed, plus liquidated damages equal to 200 percent of the wages owed in a civil action brought by the employee. The

bill also provides that an employer who is found to have retaliated against an employee for bringing a claim under the statute commits a disorderly persons offense and is liable to the employee for wages lost because of the retaliation plus damages equal to not more than 200 percent of those wages. No payment of wages or damages pursuant to this bill shall result in a violator paying wages owed or damages more than one time for the same violation.

Upon issuing a decision finding wages due to a worker are equal to or greater than \$5,000, the commissioner must inform the employer that the commissioner will conduct an audit of the employer or any successor firm of the employer and notify the Division of Taxation of the decision and recommend that the division conduct an audit of the employer to ensure the proper withholding and payment of payroll and other taxes.

The bill further enhances enforcement procedures and remedies by extending certain remedies currently available to workers who are victims of violations of the State's minimum wage law to workers who are victims of violations of the State's wage payment laws. Specifically, the bill extends the remedies provided to employees by the minimum wage law in cases of employer retaliation to cover employer retaliation under the wage payment law, and provides the same opportunity for workers aggrieved by violations of the wage payment law to bring a civil action as workers are provided for violations of the minimum wage law.

The bill also directs the commissioner, in the case of employers who fail to maintain required records and make required tax, benefit and wage payments, to conduct audits of employers and suspend or revoke business licenses of employers who are found in subsequent audits to have continued the violations. The bill amends that law to require the commissioner to use that law's remedies when notified by the Attorney General of a conviction. In addition, the bill provides that if an employer fails to comply with a final determination of the commissioner or a court judgement to pay wages owed or related damages within 10 days, the commissioner may order license suspensions, or issue a stop work order, until the failure is corrected.

The bill permits the Department of Labor and Workforce Development to contract with community-based and legal services organizations to disseminate information to workers and assist workers aggrieved by violations of State wage and hour laws.

The bill requires employers to provide current and newly hired employees a written copy of the statement produced by the department of the employee's rights under the bill, with an explanation of how to file a claim or take other actions with regard to wage violations.

The bill requires the commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, to produce an annual report on the enforcement of wage and hour laws with recommendations to improve enforcement, and place on a website information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws during the preceding period of not less than 12 months.

Finally, the bill establishes the crime of a "pattern of wage non-payment" when an employer knowingly violates, for a third or subsequent time, a range of specified laws regarding wage payment, minimum wage, and theft when the property stolen is unpaid wages. The crime of pattern of wage non-payment is classified as a crime of the third degree. A crime of the third degree is ordinarily punishable by a term of imprisonment of three to five years or a fine of up to \$15,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will result in indeterminate annual increases in enforcement and administrative costs to the State, which will partially, or fully, be offset by indeterminate annual increases in revenue collected from certain new and expanded criminal and administrative penalties.

The Division of Wage and Hour Compliance within the DOLWD administers and enforces New Jersey State labor laws, including those regarding the failure to pay wages by an employer. According to the department, the division has an estimated 59 employees managing an estimated 4,016 violations resulting from complaints in fiscal year 2018.

The bill expands existing enforcement actions available to the department, broadens the scope of wage replacement claims that may be filed with the department, and requires the department to provide certain information and reports to the public. These provisions, as well as a potential rise in the volume of claims submitted to the department as a result thereof, will likely result in an indeterminate annual expenditure increase to the State. However, the OLS is unable to quantify the additional expenses or the number of additional claims. Depending on DOLWD operating decisions, however, a portion of the added costs may be absorbed into the department's existing operating budget.

The additional operating expenses will likely be offset partially, if not fully, by revenue collected from certain new and expanded criminal and administrative penalties. The OLS cannot determine, however, the additional number of claims that will result in violations, and therefore the additional amount of penalties to be collected under this bill.

The bill also permits the department to enter into contracts with community-based legal services organizations to disseminate information regarding State wage and hour laws, and to help or represent employees in wage theft actions.

Finally, the bill permits employees to bring an action in small claims court if the unpaid wages do not exceed court jurisdictional limits. As a result, the Judiciary may incur an annual cost increase to the extent that the caseload of small claims courts may rise. The OLS does not have information to determine the number of cases and, therefore, the associated costs.

Section: Commerce, Labor and Industry

*Analyst: Juan C. Rodriguez
Associate Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

SENATE, No. 1790

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JULY 2, 2019

SUMMARY

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Additionally, the bill permits an aggrieved employee to bring a civil action, wherein a violator can be required to pay wages owed, plus liquidated damages equal to not more than 200

percent of the wages. However, payment of liquidated damages is not required for a first violation if the employer demonstrates that the action was taken in good faith and reasonable grounds for believing the action was not a violation of the bill, the employer admits the violation, and the employer pays the amount owed within 30 days. The bill also provides that an employer who is found to have retaliated against an employee for bringing a claim under the statute commits a disorderly persons offense and is liable to the employee for wages lost because of the retaliation plus damages equal to not more than 200 percent of those wages. No payment of wages or damages pursuant to this bill shall result in a violator paying wages owed or damages more than one time for the same violation.

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The bill also directs the commissioner, in the case of employers who fail to maintain required records and make required tax, benefit and wage payments, to conduct audits of employers and suspend or revoke business licenses of employers who are found in subsequent audits to have continued the violations. The bill amends that law to require the commissioner to use that law's remedies when notified by the Attorney General of a conviction. In addition, the bill provides that if an employer fails to comply with a final determination of the commissioner or a court judgement to pay wages owed or related damages within 10 days, the commissioner may order license suspensions, or issue a stop work order, until the failure is corrected.

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The bill requires employers to provide current and newly hired employees a written copy of the statement produced by the department of the employee's rights under the bill, with an explanation of how to file a claim or take other actions with regard to wage violations.

The bill requires the commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, to produce an annual report on the enforcement of wage and hour laws with recommendations to improve enforcement, and place on a website information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws during the preceding period of not less than 12 months.

Finally, the bill establishes the crime of a "pattern of wage non-payment" when an employer knowingly violates, for a third or subsequent time, a range of specified laws regarding wage payment, minimum wage, and theft when the property stolen is unpaid wages. The crime of pattern of wage non-payment is classified as a crime of the third degree. A crime of the third degree is ordinarily punishable by a term of imprisonment of three to five years or a fine of up to \$15,000, or both.

FISCAL ANALYSIS

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The bill expands existing enforcement actions available to the department, broadens the scope of wage replacement claims that may be filed with the department, and requires the department to provide certain information and reports to the public. These provisions, as well as a potential rise in the volume of claims submitted to the department as a result thereof, will likely result in an indeterminate annual expenditure increase to the State. However, the OLS is unable to quantify the additional expenses or the number of additional claims. Depending on DOLWD operating decisions, however, a portion of the added costs may be absorbed into the department's existing operating budget.

The additional operating expenses will likely be offset partially, if not fully, by revenue collected from certain new and expanded criminal and administrative penalties. The OLS cannot determine, however, the additional number of claims that will result in violations, and therefore the additional amount of penalties to be collected under this bill.

The bill also permits the department to enter into contracts with community-based legal services organizations to disseminate information regarding State wage and hour laws, and to help or represent employees in wage theft actions.

Finally, the bill permits employees to bring a civil action for alleged violations under the bill. As a result, the Judiciary may incur an annual cost increase to the extent that the caseload of courts may rise. The OLS does not have information to determine the number of cases and, therefore, the associated costs.

Section: Commerce, Labor and Industry

Analyst: Juan C. Rodriguez
Associate Fiscal Analyst

Approved: Frank W. Haines III
Legislative Budget and Finance Officer

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 2903

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblymen Benson, Egan, Assemblywoman Timberlake, Assemblyman Verrelli and Assemblywoman Tucker

SYNOPSIS

Concerns law regarding failure to pay wages.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/25/2019)

A2903 QUIJANO, LAMPITT

2

1 AN ACT concerning enforcement, penalties, and procedures for law
2 regarding failure to pay wages, revising various parts of the
3 statutory law, and supplementing article 3 of chapter 11 of Title
4 34 of the Revised Statutes.

5

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

8

9 1. Section 10 of P.L.1999, c.90 (C.2C:40A-2) is amended to
10 read as follows:

11 10. Violation of contract to pay employees.

12 a. An employer who has agreed with an employee or with a
13 bargaining agent for employees to pay wages, compensation or
14 benefits to or for the benefit of employees commits a disorderly
15 persons offense if the employer:

16 (1) fails to pay wages when due and as required by law; or

17 (2) fails to pay compensation or benefits as agreed and as
18 required by law, including all State wage, benefit and tax laws
19 within 30 days after due.

20 b. If a corporate employer violates subsection a., any officer or
21 employee of the corporation who is responsible for the violation
22 commits a disorderly persons offense.

23 c. Upon the presentation of sufficient evidence of a violation of
24 this section, the fact finder may infer that an employer who fails to
25 present employee records, as required pursuant to State wage,
26 benefit and tax laws, employed the complainant for the period of
27 time, and owes the amount of wages, as alleged in the complaint,
28 unless the employer demonstrates good cause for the failure to
29 present employee records.

30 d. A complaint alleging a violation of this section shall be filed
31 where the offense occurred, which for purposes of this section may
32 be the place where the employee was hired or the place where the
33 relevant work was performed by the employee.

34 e. Jurisdiction for prosecution under this section shall be the
35 place where the offense occurred, which for purposes of this section
36 may be the place where the employee was hired or the place where
37 the relevant work was performed by the employee.

38 f. An employer found to owe wages to an employee because
39 the employer committed a violation of this section shall pay the
40 employee the wages owed plus liquidated damages equal to 200
41 percent of the wages owed, and reasonable costs of the action to the
42 employee.

43 g. In addition to damages provided in this or any other law, an
44 employer found guilty of violating the provisions of this section
45 shall be fined \$500 plus a penalty equal to 20 percent of any wages

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 owed for a first offense, and \$1,000 plus a penalty equal to 20
2 percent of any wages owed for subsequent offenses. Any sum
3 collected as a fine or penalty pursuant to this subsection shall be
4 applied toward enforcement and administration costs of the
5 Division of Wage and Hour Compliance in the Department of Labor
6 and Workforce Development.

7 h. An employer who is found to have retaliated against an
8 employee for filing a complaint under this section commits a
9 disorderly persons offense and shall, upon conviction for the
10 violation, be fined not less than \$100 nor more than \$1,000, and
11 shall be liable to the employee for all wages lost as a result of the
12 retaliation plus damages equal to 200 percent of the wages lost as a
13 result of the retaliation, and reasonable costs of the action to the
14 employee and, if the employee was discharged, be required to offer
15 reinstatement, unless the reinstatement is prohibited by law.

16 i. No payment of an amount of wages owed or related
17 damages, including wages or damages related to retaliation, shall be
18 required under this section in addition to any amount of wages and
19 damages paid for the same violation pursuant to any action taken
20 under State wage and hour laws.

21 j. For purposes of this section:

22 “Compensation or benefits” is remuneration received in return
23 for services rendered and includes, but is not limited to, health
24 benefits, pensions, medical treatment, disability compensation and
25 workers’ compensation, including death benefits to dependents of
26 workers who have died as a result of their employment.

27 “Employee” means any person suffered or permitted to work by
28 an employer, except that independent contractors and
29 subcontractors shall not be considered employees, except that, for
30 the purposes of subsections c. through i. of this section, “employee”
31 shall not include any employee working in the construction industry
32 under the provisions of a collective bargaining agreement.

33 “Employer” means any individual, partnership, association, joint
34 stock company, trust, corporation, the administrator or executor of
35 the estate of a deceased individual, or the receiver, trustee, or
36 successor of any of the same, employing any person in this State,
37 except that, for the purposes of subsections c. through i. of this
38 section, “employer” shall not include any employer in the
39 construction industry with respect to employees of that employer
40 working under the provisions of a collective bargaining agreement
41 with the employer. For the purposes of this section the officers of a
42 corporation and any agents having the management of that
43 corporation shall be deemed to be the employers of the employees
44 of the corporation.

45 “State wage and hour laws” means article 1 of chapter 11 of Title
46 34 of the Revised Statutes and all acts supplementing that article
47 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
48 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),

1 and article 3 of chapter 11 of Title 34 of the Revised Statutes
2 (R.S.34:11-57 et seq.), but “State wage and hour laws” do not
3 include the “New Jersey Prevailing Wage Act,” P.L.1963, c.150
4 (C.34:11-56.25 et seq.), or “The Public Works Contractor
5 Registration Act,” P.L.1999, c.238 (C.34:11-56.48 et seq.):

6 “State wage, benefit and tax laws” means State wage and hour
7 laws and all of the following:

8 (1) The workers’ compensation law, R.S.34:15-1 et seq.;

9 (2) The “unemployment compensation law,” R.S.43:21-1 et
10 seq.;

11 (3) The “Temporary Disability Benefits Law,” P.L.1948, c.110
12 (C.43:21-25 et al.);

13 (4) P.L.2008, c.17 (C.43:21-39.1 et al.); and

14 (5) The “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
15 seq.

16 “When due” is the time agreed upon by the employer and
17 employee but in any case not greater than 16 days of completion of
18 the work as provided for under section 2 of P.L.1965, c.173
19 (C.34:11-4.2) and in accordance with a bi-monthly payment
20 schedule.

21 (cf: P.L.1999, c.90, s.10)

22
23 2. Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to
24 read as follows:

25 2. a. If the commissioner is notified pursuant to subsection g.
26 of this section by the Attorney General, the Attorney General’s
27 designee, or a court, of a conviction of an employer under
28 subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2), or if the
29 commissioner determines that an employer has failed, for one or
30 more of its employees, to maintain and report every record
31 regarding wages, benefits and taxes which the employer is required
32 to maintain and report pursuant to State wage, benefit and tax laws,
33 as defined in section 1 of this act, and has, in connection with that
34 failure to maintain or report the records, failed to pay wages,
35 benefits, taxes or other contributions or assessments as required by
36 those laws, the commissioner shall, as an alternative to, or in
37 addition to, any other actions taken in the enforcement of those
38 laws, notify the employer of the determination and have an audit of
39 the employer and any successor firm of the employer conducted not
40 more than 12 months after the determination.

41 b. If, in an audit conducted pursuant to subsection a. of this
42 section, the commissioner determines that the employer or any
43 successor firm to the employer has continued in its failure to
44 maintain or report records as required by those laws and continued
45 in its failure to pay wages, benefits, taxes or other contributions or
46 assessments as required by those laws, or if the commissioner is
47 notified pursuant to subsection g. of this section of a subsequent

1 conviction of the employer under subsection a. of section 10 of
2 P.L.1999, c.90 (C.2C:40A-2), the commissioner:

3 (1) May, after affording the employer or successor firm notice
4 and an opportunity for a hearing in accordance with the provisions
5 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
6 1 et seq.), issue a written determination directing any appropriate
7 agency to suspend any one or more licenses that are held by the
8 employer or successor firm, for a period of time determined by the
9 commissioner. In determining the length of a suspension, the
10 commissioner shall consider any of the following factors which are
11 relevant:

12 (a) The number of employees for which the employer or
13 successor firm failed to maintain or report required records and pay
14 required wages, benefits, taxes or other contributions or
15 assessments;

16 (b) The total amount of wages, benefits, taxes or other
17 contributions or assessments not paid by the employer or successor
18 firm;

19 (c) Any other harm resulting from the violation;

20 (d) Whether the employer or successor firm made good faith
21 efforts to comply with any applicable requirements;

22 (e) The duration of the violation;

23 (f) The role of the directors, officers or principals of the
24 employer or successor firm in the violation;

25 (g) Any prior misconduct by the employer or successor firm;
26 and

27 (h) Any other factors the commissioner considers relevant; and

28 (2) Shall conduct a subsequent audit or inspection of the
29 employer or any successor firm of the employer not more than 12
30 months after the date of the commissioner's written determination.

31 c. If, in the subsequent audit or inspection conducted pursuant
32 to subsection b. of this section, the commissioner determines that
33 the employer or successor firm has continued in its failure to
34 maintain or report records as required pursuant to State wage,
35 benefit and tax laws, as defined in section 1 of this act, and
36 continued in its failure to pay wages, benefits, taxes or other
37 contributions or assessments as required by those laws, or if the
38 commissioner is notified pursuant to subsection g. of this section of
39 a subsequent conviction of the employer under subsection a. of
40 section 10 of P.L.1999, c.90 (C.2C:40A-2), the commissioner, after
41 affording the employer or successor firm notice and an opportunity
42 for a hearing in accordance with the provisions of the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), shall issue a written determination directing any appropriate
45 agency to permanently revoke any one or more licenses that are
46 held by the employer or any successor firm to the employer and that
47 are necessary to operate the employer or successor firm.

1 d. Upon receipt of any written determination of the
2 commissioner directing an agency to suspend or revoke a license
3 pursuant to this section, and notwithstanding any other law, the
4 agency shall immediately suspend or revoke the license.

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

23 f. If, in the course of an audit or inspection conducted pursuant
24 to this section, the commissioner discovers that an employee of the
25 employer or of any successor firm of the employer has failed to
26 provide compensation to the employee as required under any of the
27 State wage and hour laws as defined in section 10 of P.L.1999, c.90
28 (C.2C:40A-2), then the commissioner shall initiate a wage claim on
29 behalf of the employee pursuant to R.S.34:11-58.

30 g. Upon the conviction of an employer under subsection a. of
31 section 10 of P.L.1999, c.90 (C.2C:40A-2) the Attorney General,
32 the Attorney General's designee, or the court shall notify the
33 commissioner of the employer's conviction.

34 (cf: P.L.2009, c.194, s.2)

35
36 3. Section 10 of P.L.1965, c.173 (C.34:11-4.10) is amended to
37 read as follows:

38 10. a. Any employer who knowingly and willfully violates any
39 provision of P.L.1965, c.173 (34:11-4.1 et seq.), or who discharges,
40 or in any other manner discriminates against an employee because
41 the employee has made a complaint to that employee's employer, to
42 the commissioner, or to that employee's authorized representative,
43 that the employer has not paid the employee the full amount of
44 wages agreed upon or required by, and in the manner required by,
45 the provisions of article 1 of chapter 11 of Title 34 of the Revised
46 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
47 or because the employee has caused to be instituted or is about to
48 cause to be instituted any proceeding under or related to that article

1 or those acts, or because that employee has testified or is about to
2 testify in any proceeding under or relating to that article or those
3 acts, or because the employee has informed any person about rights
4 under State laws regarding wages and hours worked, shall be guilty
5 of a disorderly persons offense and, upon conviction for a violation,
6 shall be punished by a fine of not less than \$100 nor more than
7 \$1,000. Each day during which any violation of [this act] article 1
8 of chapter 11 of Title 34 of the Revised Statutes and all acts
9 supplementing that article (R.S.34:11-2 et al.) continues shall
10 constitute a separate and distinct offense. In the case of a discharge
11 or other discriminatory action against the employee which is in
12 violation of this subsection, the employer shall be required to offer
13 reinstatement in employment to the discharged employee, unless the
14 reinstatement is prohibited by law, and to correct the discriminatory
15 action, and also to pay to the employee, in full, all wages lost as a
16 result of that discharge or discriminatory action, plus any
17 reasonable cost of the action, and liquidated damages equal to 200
18 percent of the wages due, under penalty of contempt proceedings.
19 Taking an adverse action against an employee within ninety days of
20 the employee filing a complaint with the commissioner for a
21 violation of article 1 of chapter 11 of Title 34 of the Revised
22 Statutes and all acts supplementing that article (R.S.34:11-2 et al.)
23 shall raise a presumption that the action was a discriminatory action
24 taken in retaliation, which may be rebutted only by clear and
25 convincing evidence that the action was taken for other,
26 permissible, reasons. An employee complaint or other
27 communication need not make explicit reference to any section or
28 provision of any State law regarding wages and hours worked to
29 trigger the protections of this section.

30 b. As an alternative to or in addition to any other sanctions
31 provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et
32 seq.), when the Commissioner of Labor and Workforce
33 Development finds that an employer has violated that act, or taken
34 any discriminatory action against the employee in violation of
35 subsection a. of this section, the commissioner is authorized to
36 assess and collect administrative penalties, up to a maximum of
37 \$250 for a first violation and up to a maximum of \$500 for each
38 subsequent violation, specified in a schedule of penalties to be
39 promulgated as a rule or regulation by the commissioner in
40 accordance with the "Administrative Procedure Act," P.L.1968,
41 c.410 (C.52:14B-1 et seq.). When determining the amount of the
42 penalty imposed because of a violation, the commissioner shall
43 consider factors which include the history of previous violations by
44 the employer, the seriousness of the violation, the good faith of the
45 employer and the size of the employer's business. No
46 administrative penalty shall be levied pursuant to this section unless
47 the Commissioner of Labor and Workforce Development provides
48 the alleged violator with notification of the violation and of the
49 amount of the penalty by certified mail and an opportunity to

1 request a hearing before the commissioner or his designee within 15
2 days following the receipt of the notice. If a hearing is requested,
3 the commissioner shall issue a final order upon such hearing and a
4 finding that a violation has occurred. If no hearing is requested, the
5 notice shall become a final order upon expiration of the 15-day
6 period. Payment of the penalty is due when a final order is issued
7 or when the notice becomes a final order. Any penalty imposed
8 pursuant to this section may be recovered with costs in a summary
9 proceeding commenced by the commissioner pursuant to **["the**
10 **penalty enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty
11 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
12 Any sum collected as a fine or penalty pursuant to this section shall
13 be applied toward enforcement and administration costs of the
14 Division of Workplace Standards in the Department of Labor and
15 Workforce Development.

16 c. If any employer fails to pay the full amount of wages to an
17 employee agreed to or required by, or in the manner required by,
18 the provisions of article 1 of chapter 11 of Title 34 of the Revised
19 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
20 the employee may recover in a civil action the full amount of any
21 wages due, or any wages due because of any discriminatory action
22 in violation of subsection a. of this section, plus an amount of
23 liquidated damages equal to 200 percent of the wages due, together
24 with costs and reasonable attorney's fees as are allowed by the
25 court, except that if there is an agreement of the employee to accept
26 payment of the unpaid wages supervised by the commissioner
27 pursuant to section 9 of P.L.1965, c.173 (C.34:11-4.9) or R.S.34:11-
28 58, the liquidated damages shall be equal to 200 percent of wages
29 that were due prior to the supervised payment. Any agreement by
30 the employee to work for, or accept, wages paid which are less than
31 the amount agreed to or required by law, or paid in a manner other
32 than that required by article 1 of chapter 11 of Title 34 of the
33 Revised Statutes and all acts supplementing that article (R.S.34:11-
34 2 et al.), shall be no defense to the action. The employee shall be
35 entitled to maintain the action for and on behalf of other similarly
36 situated employees, or designate an agent or representative to
37 maintain the action for and on behalf of all similarly situated
38 employees. The employee may bring the action to recover unpaid
39 wages pursuant to this section in the Superior Court, and may bring
40 the action in the Division of Small Claims of the Superior Court,
41 Law Division, Special Civil Part if the sum of the unpaid wages and
42 the liquidated damages does not exceed the jurisdictional limits of
43 the Division of Small Claims. Upon the request of any employee
44 not paid the full wages agreed upon or required by law and in the
45 manner required by the provisions of article 1 of chapter 11 of Title
46 34 of the Revised Statutes and all acts supplementing that article
47 (R.S.34:11-2 et al.), the commissioner may take an assignment of
48 the wage claim in trust for the assigning employee and may bring
49 any legal action necessary to collect the claim, and the employer
50 shall be required to pay to the employee the unpaid wages and

1 liquidated damages equal to 200 percent of the amount of the
2 unpaid wages and pay to the commissioner the costs and reasonable
3 attorney's fees as determined by the court.

4 (cf: P.L.1991, c.205, s.3)

5

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

8 25. a. Any employer who discharges or in any other manner
9 discriminates against any employee because the employee has made
10 any complaint to his employer, to the commissioner, the director or
11 to their authorized representatives, or to a representative of the
12 employee, that he has not been paid wages in accordance with the
13 provisions of this act, or because such employee has caused to be
14 instituted or is about to cause to be instituted any proceeding under
15 or related to this act, or because such employee has testified or is
16 about to testify in any such proceeding, or because such employee
17 has served or is about to serve on a wage board, or because the
18 employee has informed any person about rights under State laws
19 regarding wages and hours of work, shall be guilty of a disorderly
20 persons offense and shall, upon conviction therefor, be fined not
21 less than \$100 nor more than \$1,000. Such employer shall be
22 required, as a condition of such judgment of conviction, to offer
23 reinstatement in employment to any such discharged employee,
24 unless the reinstatement is prohibited by law, and to correct any
25 such discriminatory action, and also to pay to any such employee in
26 full, all wages lost as a result of such discharge or discriminatory
27 action and an additional amount of liquidated damages equal to 200
28 percent of the wages due, under penalty of contempt proceedings
29 for failure to comply with such requirement. Taking an adverse
30 action against an employee within ninety days of the employee
31 filing a complaint with the commissioner for a violation of
32 P.L.1966, c.113 (C.34:11-56a et seq.) shall raise a presumption that
33 the action was a discriminatory action taken in retaliation, which
34 may be rebutted only by clear and convincing evidence that the
35 action was taken for other, permissible, reasons. An employee
36 complaint or other communication need not make explicit reference
37 to any section or provision of State law regarding wages or hours
38 worked to trigger the protections of this section.

39 b. As an alternative to or in addition to any other sanctions
40 provided by law for violations of P.L.1966, c.113 (C.34:11-56a et
41 seq.), when the Commissioner of Labor and Workforce
42 Development finds that an employer has violated that act, or taken
43 any discriminatory action against the employee in violation of
44 subsection a. of this section, the commissioner is authorized to
45 assess and collect administrative penalties, up to a maximum of
46 \$250 for a first violation and up to a maximum of \$500 for each
47 subsequent violation, specified in a schedule of penalties to be
48 promulgated as a rule or regulation by the commissioner in
49 accordance with the "Administrative Procedure Act," P.L.1968,

1 c.410 (C.52:14B-1 et seq.). When determining the amount of the
2 penalty imposed because of a violation, the commissioner shall
3 consider factors which include the history of previous violations by
4 the employer, the seriousness of the violation, the good faith of the
5 employer and the size of the employer's business. No
6 administrative penalty shall be levied pursuant to this section unless
7 the Commissioner of Labor and Workforce Development provides
8 the alleged violator with notification of the violation and of the
9 amount of the penalty by certified mail and an opportunity to
10 request a hearing before the commissioner or his designee within 15
11 days following the receipt of the notice. If a hearing is requested,
12 the commissioner shall issue a final order upon such hearing and a
13 finding that a violation has occurred. If no hearing is requested, the
14 notice shall become a final order upon expiration of the 15-day
15 period. Payment of the penalty is due when a final order is issued
16 or when the notice becomes a final order. Any penalty imposed
17 pursuant to this section may be recovered with costs in a summary
18 proceeding commenced by the commissioner pursuant to **["the**
19 **penalty enforcement law" (N.J.S.2A:58-1 et seq.)]** the "Penalty
20 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
21 Any sum collected as a fine or penalty pursuant to this section shall
22 be applied toward enforcement and administration costs of the
23 Division of Workplace Standards in the Department of Labor and
24 Workforce Development.
25 (cf: P.L.1991, c.205, s.22)

26
27 5. Section 26 of P.L.1966, c.113 (C.34:11-56a25) is amended
28 to read as follows:

29 26. If any employee is paid by an employer less than the
30 minimum fair wage to which **[such]** the employee is entitled under
31 the provisions of **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or
32 by virtue of a minimum fair wage order **[such]**, the employee may
33 recover in a civil action the full amount of **[such]** that minimum
34 wage less any amount actually paid to him or her by the employer
35 **[together with]** and an additional amount equal to 200 percent of
36 the amount of the unpaid minimum wages as liquidated damages,
37 plus costs and **[such]** reasonable attorney's fees as **[may be**
38 **allowed]** determined by the court, **[and any]** except that if there is
39 an agreement of the employee to accept payment of the unpaid
40 wages or compensation supervised by the commissioner pursuant to
41 section 24 of P.L.1966, c.113 (C.34:11-56a23) or R.S.34:11-58, the
42 liquidated damages shall be equal to 200 percent of wages that were
43 due prior to the supervised payment. Any agreement between
44 **[such]** the employee and the employer to work for less than **[such]**
45 the minimum fair wage shall be no defense to the action. An
46 employee shall be entitled to maintain **[such]** the action for and on
47 behalf of himself or other employees similarly situated, and **[such]**

1 the employee and employees may designate an agent or
2 representative to maintain **[such]** the action for and on behalf of all
3 employees similarly situated. The employee may bring the action
4 to recover unpaid minimum wages pursuant to this section in the
5 Superior Court, and may bring the action in the Division of Small
6 Claims of the Superior Court, Law Division, Special Civil Part if
7 the sum of the amount of unpaid minimum wages and the amount of
8 liquidated damages does not exceed the jurisdictional limits of the
9 Division of Small Claims.

10 At the request of any employee paid less than the minimum wage
11 to which **[such]** the employee was entitled under the provisions of
12 **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or under an order,
13 the commissioner may take an assignment of the wage claim in trust
14 for the assigning employee and may bring any legal action
15 necessary to collect the claim, and the employer shall be required to
16 pay to the employee the unpaid wages and liquidated damages equal
17 to 200 percent the amount of the unpaid wages and pay to the
18 commissioner the costs and **[such]** reasonable attorney's fees as
19 **[may be allowed]** determined by the court.

20 (cf: P.L.1966, c.113, s.26)

21

22 6. Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is amended
23 to read as follows:

24 1. No claim for unpaid minimum wages, unpaid overtime
25 compensation, or other damages under this act shall be valid with
26 respect to any such claim which has arisen more than **[2]** six years
27 prior to the commencement of an action for the recovery thereof. In
28 determining when an action is commenced, the action shall be
29 considered to be commenced on the date when a complaint is filed
30 with the Commissioner of the Department of Labor and **[Industry]**
31 Workforce Development or the Director of **[the]** Wage and Hour
32 **[Bureau]** Compliance, and notice of such complaint is served upon
33 the employer; or, where an audit by the Department of Labor and
34 **[Industry]** Workforce Development discloses a probable cause of
35 action for unpaid minimum wages, unpaid overtime compensation,
36 or other damages, and notice of such probable cause of action is
37 served upon the employer by the Director of **[the]** Wage and Hour
38 **[Bureau]** Compliance; or where a cause of action is commenced in
39 a court of appropriate jurisdiction.

40 (cf: P.L.1967, c.216, s.1)

41

42 7. R.S.34:11-57 is amended to read as follows:

43 34:11-57. As used in this article:

44 "Commissioner" means the Commissioner of Labor and
45 **[Industry]** Workforce Development or any person or persons in the
46 department designated in writing by him for the purposes of this
47 article.

1 “Community-based organization” means a public, or nonprofit
2 private, organization funded with public or private funds, or both,
3 that provides services to day laborers, migrant laborers, temporary
4 laborers, low wage workers, or any other type of employee.

5 “Department” means the Department of Labor and Workforce
6 Development.

7 "Employee" means any natural person who works for another for
8 hire.

9 "Employer" means any person, partnership, firm or corporation
10 employing another for hire.

11 “Legal services organization” means a public, or nonprofit
12 private, organization funded with public or private funds, or both,
13 that provides counseling or advice related to wage protection laws,
14 preparation of legal documents, or representation of any person
15 before a court or administrative agency.

16 “State wage and hour laws” means article 1 of chapter 11 of Title
17 34 of the Revised Statutes and all acts supplementing that article
18 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
19 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
20 and article 3 of chapter 11 of Title 34 of the Revised Statutes
21 (R.S.34:11-57 et seq.), but “State wage and hour laws” do not
22 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150
23 (C.34:11-56.25 et seq.), or "The Public Works Contractor
24 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

25 "Wages" means any moneys due an employee from the employer
26 whether payable by the hour, day, week, semimonthly, monthly or
27 yearly and shall include commissions, bonus, piecework
28 compensation and any other benefits arising out of an employment
29 contract.

30 (cf: P.L.1964, c.92, s.1)

31
32 8. R.S.34:11-58 is amended to read as follows:

33 34:11-58. a. An employee may file a claim for wages against an
34 employer under this section or any of the other State wage and
35 hours laws for wages owed related to work performed up to six
36 years prior to the date the claim for wages is filed.

37 b. An employer found to owe an employee wages shall pay the
38 employee the wages owed plus liquidated damages equal to 200%
39 of the wages owed, exclusive of any costs or fees.

40 c. The commissioner is authorized and empowered to
41 investigate any claim for wages due an employee and in such
42 investigation may summon the defendant, subpoena witnesses,
43 administer oaths, take testimony and shall upon such proceeding
44 make a decision or award **【when the sum in controversy, exclusive**
45 **of costs, does not exceed \$30,000.00】.**

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

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

5 d. Upon an investigation of a wage claim initiated pursuant to
6 this section or any of the other State wage and hours laws, if an
7 employer fails to provide sufficient employee records, as required
8 to be kept under any State wage and hour laws, there shall be a
9 rebuttable presumption that the employee worked for the employer
10 for the period of time and for the amount of wages as alleged in the
11 wage claim.

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

27 f. Upon issuing a decision, under this section or any of the
28 other State wage and hours laws, finding wages due to an employee
29 in an amount equal to or greater than \$5,000, the commissioner
30 shall:

31 (1) inform the employer of the commissioner's intention to
32 conduct an audit of the employer or any successor firm of the
33 employer pursuant to section 2 of P.L.2009, c.194 (C.34:1A-1.12);
34 and

35 (2) notify the Division of Taxation in the Department of the
36 Treasury of the decision and recommend that the division conduct
37 an audit of the employer to ensure the proper withholding and
38 payment of payroll and other taxes by the employer.

39 g. No payment of an amount of wages owed or related
40 damages, including wages or damages related to retaliation, shall be
41 required under the provision of this section, or under the provisions
42 of any of the other State wage and hour laws, which results in a
43 violation paying wages owed or damages more than one time for the
44 same violation.

45 (cf: P.L.2006, c.25, s.1)

46
47 9. (New section) a. If an employer fails to comply with a final
48 determination of the commissioner or a judgment of a court,

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

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

11 (2) issue a stop work order against the violators requiring the
12 cessation of all business operations of the violator. The stop work
13 order may only be issued against the individual or entity found to be
14 in violation, and only as to the specific place of business or
15 employment for which the violation exists. The stop work order
16 shall be effective when served upon the violator or at a place of
17 business or employment by posting a copy of the stop work order in
18 a conspicuous location at the place of business or employment. The
19 stop work order shall remain in effect until the commissioner issues
20 an order releasing the stop work order upon a finding that the
21 violation has been corrected. As a condition of release of a stop-
22 work order under this section, the commissioner may require the
23 employer against whom the stop-work order had been issued to file
24 with the department periodic reports for a probationary period of
25 two years.

26 b. Stop work orders and any penalties imposed under a stop
27 work order against a corporation, partnership, or sole proprietorship
28 shall be effective against any successor entity that has one or more
29 of the same principals or officers as the corporation, partnership, or
30 sole proprietorship against which the stop work order was issued
31 and that is engaged in the same or equivalent trade or activity.

32 c. Any employee affected by a stop work order issued pursuant
33 to this section shall be paid by the employer for the first ten days of
34 work lost because of the stop work order.

35 d. A rebuttable presumption that an employer has established a
36 successor entity shall arise if the two share at least three of the
37 following capacities or characteristics:

- 38 (1) perform similar work;
- 39 (2) occupy the same premises;
- 40 (3) have the same telephone or fax number;
- 41 (4) have the same email address or Internet website;
- 42 (5) perform work in the same geographical area;
- 43 (6) employ substantially the same work force;
- 44 (7) utilize the same tools and equipment;
- 45 (8) employ or engage the services of any person or persons
46 involved in the direction or control of the other; or
- 47 (9) list substantially the same work experience.

1 10. (New section) a. A client employer and a labor contractor
2 providing workers to the client employer shall be subject to joint
3 and several liability and shall share civil legal responsibility for any
4 violations of the provisions of State wage and hour laws or
5 violations of the provisions of section 10 of P.L.1999, c.90
6 (C.2C:40A-2) regarding compliance with State wage and hour laws,
7 including provisions regarding retaliatory actions against employees
8 for exercising their rights under any of those laws, and both may be
9 subject to any remedy provided for violations of those laws. A
10 client employer shall not shift to the labor contractor any legal
11 duties or liabilities under the provisions of the “Worker Health and
12 Safety Act,” P.L.1965, c.154 (C.34:6A-1 et seq.) or “The Worker
13 and Community Right to Know Act,” P.L.1983, c.315 (C.34:5A-1
14 et seq.) with respect to workers supplied by the labor contractor. A
15 waiver of the provisions of this section is contrary to public policy,
16 and is void and unenforceable.

17 b. This section shall not be interpreted as:

18 (1) imposing individual liability on a homeowner for labor or
19 services received at the home or the owner of a home-based
20 business for labor or services received at the home; or

21 (2) restricting or limiting the rights of a client employer to
22 recover from a labor contractor any expense to the client employer,
23 or the rights of a labor contractor to recover from a client employer
24 any expense to the labor contractor, resulting from any violation by
25 the labor contractor or client employer of the provisions of State
26 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40A-
27 2), or restricting or limiting the provisions in contracts between
28 client employers and labor contractors regarding the recovery of
29 expenses pursuant to this paragraph.

30 c. As used in this section:

31 “Client employer” means a business entity, regardless of its
32 form, that obtains or is provided workers, directly from a labor
33 contractor or indirectly from a subcontractor, to perform labor or
34 services within its usual course of business.

35 “Labor contractor” means any individual or entity that supplies,
36 either with or without a contract, directly or indirectly, a client
37 employer with workers to perform labor or services within the
38 client employer’s usual course of business, except that “labor
39 contractor” does not include a bona fide labor organization or
40 apprenticeship program, or a hiring hall operated pursuant to a
41 collective bargaining agreement.

42 “Usual course of business” means the regular and customary
43 work of a business, performed within or upon the premises or
44 worksite of the client employer, or any other place of business of
45 the client employer for which services or labor are performed.

46

47 11. (New section) Each employer shall provide each current
48 employee and each newly hired employee of the employer, a written

1 copy of the statement produced by the department pursuant to
2 subsection c. of section 12 of P.L. , c. (C.) (pending before
3 the Legislature as this bill) of the employee's rights under the
4 provisions of State wage and hour laws and the provisions of
5 section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation of
6 how to file a claim or take an action pursuant to those laws.

7
8 12. (New section) The department, for the purpose of supporting
9 the enforcement of the provisions of State wage and hour laws and
10 the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), shall:

11 a. contract with community-based organizations and legal
12 services organizations to disseminate information to day laborers,
13 migrant laborers, temporary laborers, or any other type of employee
14 concerning the protections afforded by State wage and hour laws
15 and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by
16 which an individual may take actions under those laws;

17 b. contract with community-based organizations and legal
18 services organizations to investigate, prepare, and if necessary,
19 represent employees in actions under State wage and hour laws or
20 section 10 of P.L.1999, c.90 (C.2C:40A-2), including actions under
21 those laws concerning retaliation against employees; and

22 c. produce, and make available to the public on the website of
23 the department, a statement of employee rights under the provisions
24 of State wage and hour laws and the provisions of section 10 of
25 P.L.1999, c.90 (C.2C:40A-2), with an explanation of how to file a
26 claim or take an action pursuant to those laws.

27 The contracts entered into between the department and
28 community-based organizations and legal services organizations
29 pursuant to this section shall require that the organizations make all
30 services accessible to persons with limited English proficiency and
31 shall provide that, in any case in which the community-based or
32 legal services organization assists or represents employees pursuant
33 to subsection b. of this section, 50 percent of any fees or penalties
34 collected by the department shall be paid to the organization for
35 services provided pursuant to contracts entered into pursuant to this
36 section, and that payment shall be regarded as an enforcement and
37 administrative cost of the Division of Workplace Standards of the
38 department.

39 The department, and any community-based organization or legal
40 services organization contracting with the department pursuant to
41 this section, shall provide any individual seeking assistance to file a
42 complaint or take an action regarding unpaid wages with a
43 description of all of the applicable remedies available to the
44 individual under State wage and hour laws and section 10 of
45 P.L.1999, c.90 (C.2C:40A-2), including the individual's right to
46 obtain liquidated damages, and that that right to damages is waived
47 if the individual agrees to accept payment of the unpaid wages
48 supervised by the commissioner.

1 13. (New section) a. The commissioner, in consultation with the
2 Administrative Director of the Courts and the Attorney General,
3 shall compile and prominently place on a website, maintained by
4 the department and available to the public, an annual report
5 evaluating the effectiveness and efficiency of the enforcement and
6 administration of wage claims and wage collections. The report
7 shall include, but not be limited to:

8 (1) the number of complaints, investigations, prosecutions,
9 dispositions, and business license suspensions and revocations, the
10 number and amount of penalties, the amount of wages recovered,
11 and the number of workers effected;

12 (2) an enumeration and description of all community-based and
13 legal services organizations contracted by the department to support
14 the enforcement; and

15 (3) recommendations for strengthening the implementation and
16 enforcement of P.L. , c. (C.) (pending before the
17 Legislature as this bill).

18 b. The commissioner, in consultation with the Administrative
19 Director of the Courts and the Attorney General, shall compile and
20 prominently place on a website, maintained by the department and
21 available to the public, the following information regarding each
22 wage claim in which an employer was found to have been in
23 violation of one or more State wage and hour laws in a final
24 determination by the commissioner or a judgement of a court made
25 during the preceding period of not less than 12 months:

26 (1) the name and address of the employer;

27 (2) the nature of the claim, including whether it is a claim for
28 one or more of the following: unpaid wages; failure to pay the
29 minimum wage; failure to pay required overtime; or retaliation
30 against an employee in connection with State wage and hour laws;

31 (3) the number of affected employees, and the amount of wages
32 found owed; and

33 (4) any findings, penalties, and business license suspensions or
34 revocations that resulted from the wage claim.

35 The information on a claim shall be placed on the website not
36 more than 30 days after the final determination or judgement is
37 made.

38

39 14. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 This bill assists workers aggrieved by certain violations of laws
45 regarding the payment of wages by strengthening enforcement
46 procedures, remedies and a variety of criminal, civil and
47 administrative sanctions against the violators.

1 With respect to criminal sanctions, the bill revises the current
2 provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2), to
3 strengthen enforcement procedures and criminal sanctions against
4 employers who fail to pay wages, compensation or benefits required
5 by law or retaliate against employees who file complaints regarding
6 those violations.

7 Under the bill, a violator is required to pay the employee wages
8 owed, plus liquidated damages equal to 200% of the wages owed.
9 In addition to the damages, an employer found guilty of a violation
10 is fined \$500 plus a penalty of 20% of any wages owed for a first
11 offense, and a fine of \$1,000 plus a penalty of 20% of any wages
12 owed for subsequent offenses. The bill also provides that an
13 employer who is found to have retaliated against an employee for
14 bringing a claim under the statute commits a disorderly persons
15 offense and is liable to the employee for wages lost because of the
16 retaliation plus damages equal to 200% of those wages.

17 Jurisdiction for a case, and the location for filing a complaint, is
18 based on the location where the employee was hired or employed.
19 If the employer fails to provide wage records required by law, it is
20 presumed that the employer owes the amount of wages alleged,
21 unless the employer demonstrates good cause for the failure.

22 In addition to its enhancements of criminal procedures and
23 sanctions, the bill expands the enforcement provisions available to
24 the Commissioner of Labor and Workforce Development and the
25 remedies available to aggrieved workers.

26 The bill permits a worker to file a claim with the commissioner
27 for wages owed to the worker related to work performed up to six
28 years prior to the filing of the claim. An employer found to owe
29 wages must pay the employee the wages owed plus liquidated
30 damages equal to 200% of the owed wages. If an employer fails to
31 provide the required employee records there is a rebuttable
32 presumption that the employer owes the amount of wages alleged.

33 Upon issuing a decision finding wages due to a worker are equal
34 to or greater than \$5,000, the commissioner must inform the
35 employer that the commissioner will conduct an audit of the
36 employer or any successor firm of the employer pursuant to section
37 2 of P.L.2009, c.194 (C.34:1A-1.12), and notify the Division of
38 Taxation of the decision and recommend that the division conduct
39 an audit of the employer to ensure the proper withholding and
40 payment of payroll and other taxes.

41 The bill further enhances enforcement procedures and remedies
42 by extending certain remedies currently available to workers who
43 are victims of violations of the State's minimum wage law to
44 workers who are victims of violations of the State's wage payment
45 laws. Specifically, the bill extends the remedies provided to
46 employees by the minimum wage law in cases of employer
47 retaliation to cover employer retaliation under the wage payment
48 law, and provides the same opportunity for workers aggrieved by

1 violations of the wage payment law to bring a civil action as
2 workers are provided for violations of the minimum wage law.

3 In addition, the bill provides the following two new remedies for
4 violations of both the wage payment law and the minimum wage
5 law:

6 1. The employee may bring the action in small claims court if
7 the unpaid wages and damages do not exceed court jurisdictional
8 limits; and

9 2. An employee who prevails in a civil action may recover
10 liquidated damages equal to 200% of the unpaid wages.

11 The bill also amends section 2 of P.L.2009, c.194 (C.34:1A-
12 1.12), which is the law that directs the commissioner, in the case of
13 employers who fail to maintain required records and make required
14 tax, benefit and wage payments, to conduct audits of employers and
15 suspend or revoke business licenses of employers who are found in
16 subsequent audits to have continued the violations. The bill amends
17 that law to require the commissioner to use that law's remedies
18 when notified by the Attorney General of a conviction under section
19 10 of P.L.1999, c.90 (C.2C:40A-2). In addition, if an employer
20 fails to comply with a final determination of the commissioner or a
21 court judgement to pay wages owed or related damages within ten
22 days, the commissioner may order license suspensions, or issue a
23 stop work order, until the failure is corrected.

24 The bill makes a client employer and a labor contractor
25 providing workers to the client employer subject to joint and several
26 liability for violations of wage and hour laws. The bill provides
27 that nothing in the bill shall be interpreted as restricting or limiting
28 the rights of a client employer to recover from a labor contractor
29 any expense to the client employer, or the rights of a labor
30 contractor to recover from a client employer any expense to the
31 labor contractor, or restricting or limiting the provisions in contracts
32 between client employers and labor contractors regarding the
33 recovery of expenses.

34 Because wage payment violations especially impact vulnerable
35 employees such as day laborers and immigrants, who often suffer
36 from low wages and the fear of retaliation, the bill's definitions of
37 "employee" reaffirm that the protections of the State's wage and
38 hour laws apply to all employees, with no exclusions based on
39 citizenship status.

40 The bill directs the Department of Labor and Workforce
41 Development to contract with community-based and legal services
42 organizations to disseminate information to workers and assist
43 workers aggrieved by violations of State wage and hour laws. The
44 bill requires that the contracts provide that the organizations make
45 all services accessible to persons with limited English proficiency
46 and that, in any case in which the community-based or legal
47 services organization assists or represents employees, 50% of any

1 fees or penalties collected by the department be paid to the
2 organization.

3 The bill requires employers to provide current and newly hired
4 employees a written copy of the statement produced by the
5 department of the employee's rights under the bill, with an
6 explanation of how to file a claim or take other actions with regard
7 to wage violations.

8 The bill requires the commissioner, in consultation with the
9 Administrative Director of the Courts and the Attorney General, to
10 produce an annual report on the enforcement of wage and hour laws
11 with recommendations to improve enforcement, and place on a
12 website information regarding each wage claim in which an
13 employer was found to have been in violation of one or more State
14 wage and hour laws during the preceding period of not less than 12
15 months.

16 The bill exempts violations of the "New Jersey Prevailing Wage
17 Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), and "The Public
18 Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-
19 56.48 et seq.), from the remedies of the bill. The bill also exempts
20 from its provisions construction industry employers and workers
21 who have collective bargaining agreements. Finally, the bill
22 expressly provides that violations of the building services prevailing
23 wage law, P.L.2005, c.379 (C.34:11-56.58 et seq.), are subject to
24 the remedies of the bill.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2903

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 24, 2019

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 2903.

As amended, this bill assists workers aggrieved by certain violations of laws regarding the payment of wages by strengthening enforcement procedures, remedies and a variety of criminal, civil and administrative sanctions against the violators.

Under the bill, as amended, upon conviction for a first violation, a employer shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second violation, be punished by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. Upon conviction for a third or subsequent violation, an employer shall be guilty of a crime of the fourth degree and be punished by a fine of not less than \$2,000 nor more than \$10,000 or by imprisonment for up to 18 months or by both the fine and imprisonment.

Additionally, under the bill, a violator can be required to pay the employee wages owed, plus liquidated damages equal to 200% of the wages owed in a civil action brought by the employee. The bill also provides that an employer who is found to have retaliated against an employee for bringing a claim under the statute commits a disorderly persons offense and is liable to the employee for wages lost because of the retaliation plus damages equal to 200% of those wages.

In addition to its enhancements of criminal procedures and sanctions, the bill expands the enforcement provisions available to the Commissioner of Labor and Workforce Development and the remedies available to aggrieved workers.

The bill permits a worker to file a claim with the commissioner for wages owed to the worker related to work performed up to six years prior to the filing of the claim. An employer found to owe wages must pay the employee the wages owed plus liquidated damages equal to 200% of the owed wages. If an employer fails to provide the required employee records there is a rebuttable presumption that the employer owes the amount of wages alleged. As amended, the bill provides that an employer that does not have sufficient employee records due to

record destruction as a result of a natural disaster is not subject to the rebuttable presumption that the employee worked for the employer for the period of time and for the amount of wages as alleged in the wage claim.

Upon issuing a decision finding wages due to a worker are equal to or greater than \$5,000, the commissioner must inform the employer that the commissioner will conduct an audit of the employer or any successor firm of the employer pursuant to section 2 of P.L.2009, c.194 (C.34:1A-1.12), and notify the Division of Taxation of the decision and recommend that the division conduct an audit of the employer to ensure the proper withholding and payment of payroll and other taxes.

The bill further enhances enforcement procedures and remedies by extending certain remedies currently available to workers who are victims of violations of the State's minimum wage law to workers who are victims of violations of the State's wage payment laws. Specifically, the bill extends the remedies provided to employees by the minimum wage law in cases of employer retaliation to cover employer retaliation under the wage payment law, and provides the same opportunity for workers aggrieved by violations of the wage payment law to bring a civil action as workers are provided for violations of the minimum wage law.

In addition, the bill provides the following two new remedies for violations of both the wage payment law and the minimum wage law:

1. The employee may bring the action in small claims court if the unpaid wages and damages do not exceed court jurisdictional limits; and
2. An employee who prevails in a civil action may recover liquidated damages equal to 200% of the unpaid wages.

The bill also amends section 2 of P.L.2009, c.194 (C.34:1A-1.12), which is the law that directs the commissioner, in the case of employers who fail to maintain required records and make required tax, benefit and wage payments, to conduct audits of employers and suspend or revoke business licenses of employers who are found in subsequent audits to have continued the violations. The bill amends that law to require the commissioner to use that law's remedies when notified by the Attorney General of a conviction under section 10 of P.L.1999, c.90 (C.2C:40A-2). In addition, the bill provides that if an employer fails to comply with a final determination of the commissioner or a court judgement to pay wages owed or related damages within 10 days, the commissioner may order license suspensions, or issue a stop work order, until the failure is corrected.

The bill makes a client employer and a labor contractor providing workers to the client employer subject to joint and several liability for violations of wage and hour laws. The bill provides that nothing in the bill shall be interpreted as restricting or limiting the rights of a client employer to recover from a labor contractor any expense to the client

employer, or the rights of a labor contractor to recover from a client employer any expense to the labor contractor, or restricting or limiting the provisions in contracts between client employers and labor contractors regarding the recovery of expenses.

Because wage payment violations especially impact vulnerable employees such as day laborers and immigrants, who often suffer from low wages and the fear of retaliation, the bill's definitions of "employee" reaffirm that the protections of the State's wage and hour laws apply to all employees, with no exclusions based on citizenship status.

The bill directs the Department of Labor and Workforce Development to contract with community-based and legal services organizations to disseminate information to workers and assist workers aggrieved by violations of State wage and hour laws. The bill requires that the contracts provide that the organizations make all services accessible to persons with limited English proficiency and that, in any case in which the community-based or legal services organization assists or represents employees, 50% of any fees or penalties collected by the department be paid to the organization.

The bill requires employers to provide current and newly hired employees a written copy of the statement produced by the department of the employee's rights under the bill, with an explanation of how to file a claim or take other actions with regard to wage violations.

The bill requires the commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, to produce an annual report on the enforcement of wage and hour laws with recommendations to improve enforcement, and place on a website information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws during the preceding period of not less than 12 months.

The bill exempts violations of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), and "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), from the remedies of the bill. Finally, the bill expressly provides that violations of the building services prevailing wage law, P.L.2005, c.379 (C.34:11-56.58 et seq.), are subject to the remedies of the bill.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) omit section 1 in its entirety, which would have added certain provisions of the bill to the section of criminal law concerning the failure to pay wages and benefits;

(2) increase the fine under the labor laws for a first violation from \$100 to a minimum of \$500, or by imprisonment for at least 10 days, or both, and additional penalties for subsequent violations;

(3) change timeframe for continuing violations from recurring daily to weekly;

(4) limit investigations by the department to proceedings wherein the sum in controversy does not exceed \$50,000;

(5) modify the definition of a successor entity of an employer;

(6) provide that an employer that does not have sufficient employee records due to record destruction as a result of a natural disaster is not subject to the rebuttable presumption that the employee worked for the employer for the period of time and for the amount of wages as alleged in the wage claim; and

(7) renumber the sections accordingly and make minor technical changes.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2903

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2903 (1R), with committee amendments.

As amended, this bill assists workers aggrieved by certain violations of laws regarding the payment of wages by strengthening enforcement procedures, remedies and a variety of criminal, civil and administrative sanctions against the violators.

The bill establishes the crime of a “pattern of wage non-payment” when an employer knowingly violates, for a third or subsequent time, a range of specified laws regarding wage payment, minimum wage, and theft when the property stolen is unpaid wages. The crime of pattern of wage non-payment is deemed a crime of the third degree, which is subject to punishment of between three and five years of imprisonment and up to \$15,000 in fines.

The bill permits a worker to file a claim with the commissioner for wages owed to the worker related to work performed, or for unlawful retaliatory discharge or other discrimination, occurring up to six years prior to the filing of the claim. An employer found to owe wages must pay the employee the wages owed plus liquidated damages equal to not more than 200% of the owed wages. If an employer fails to provide the required employee records there is a rebuttable presumption that the employer owes the amount of wages alleged.

Upon issuing a decision finding wages due to a worker are equal to or greater than \$5,000, the commissioner may inform the employer that the commissioner will conduct an audit of the employer or any successor firm of the employer pursuant to section 2 of P.L.2009, c.194 (C.34:1A-1.12), and notify the Division of Taxation of the decision and recommend that the division conduct an audit of the employer to ensure the proper withholding and payment of payroll and other taxes.

The bill further enhances enforcement procedures and remedies by extending certain remedies currently available to workers who are victims of violations of the State’s minimum wage law to workers who are victims of violations of the State’s wage payment laws. Specifically, the bill extends the remedies provided to employees by

the minimum wage law in cases of employer retaliation to cover employer retaliation under the wage payment law, and provides the same opportunity for workers aggrieved by violations of the wage payment law to bring a civil action as workers are provided for violations of the minimum wage law.

In addition, the bill provides the following two new remedies for violations of both the wage payment law and the minimum wage law:

1. The employee may bring the action in small claims court if the unpaid wages and damages do not exceed court jurisdictional limits; and

2. An employee who prevails in a civil action may recover liquidated damages equal to 200% of the unpaid wages.

The bill also amends section 2 of P.L.2009, c.194 (C.34:1A-1.12), which is the law that directs the commissioner, in the case of employers who fail to maintain required records and make required tax, benefit and wage payments, to conduct audits of employers and suspend or revoke business licenses of employers who are found in subsequent audits to have continued the violations. The bill amends that law to require the commissioner to use that law's remedies when notified by the Attorney General of a conviction under state wage and hour laws. In addition, if an employer fails to comply with a final determination of the commissioner or a court judgement to pay wages owed or related damages within ten days, the commissioner may order license suspensions, or issue a stop work order, until the failure is corrected.

The bill makes a client employer and a labor contractor providing workers to the client employer subject to joint and several liability for violations of wage and hour laws. The bill provides that nothing in the bill shall be interpreted as restricting or limiting the rights of a client employer to recover from a labor contractor any expense to the client employer, or the rights of a labor contractor to recover from a client employer any expense to the labor contractor, or restricting or limiting the provisions in contracts between client employers and labor contractors regarding the recovery of expenses.

Because wage payment violations especially impact vulnerable employees such as day laborers and immigrants, who often suffer from low wages and the fear of retaliation, the bill's definitions of "employee" reaffirm that the protections of the State's wage and hour laws apply to all employees, with no exclusions based on citizenship status.

The bill directs the Department of Labor and Workforce Development to contract with community-based and legal services organizations to disseminate information to workers regarding remedies available to workers with respect to violations of State wage and hour laws. The bill requires that the contracts provide that the organizations make all services accessible to persons with limited English proficiency.

The bill requires employers to provide current and newly hired employees a written copy of the statement produced by the department of the employee's rights under the bill, with an explanation of how to file a claim or take other actions with regard to wage violations.

The bill requires the commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, to produce an annual report on the enforcement of wage and hour laws with recommendations to improve enforcement, and place on a website information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws during the preceding period of not less than 12 months.

The bill exempts violations of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), and "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), from the remedies of the bill. The bill also exempts from its provisions construction industry employers and workers who have collective bargaining agreements. Finally, the bill expressly provides that violations of the building services prevailing wage law, P.L.2005, c.379 (C.34:11-56.58 et seq.), are subject to the remedies of the bill.

COMMITTEE AMENDMENTS:

The amendments adopted by the committee:

1. Amend section 2 of P.L.2009, c.194 (C.34:1A-1.12) to increase the number of labor laws for which violations by an employer may lead, under that law, to audits and, upon repeat violations, suspension and revocation of business licenses of the employer.

2. Expressly state that the disorderly persons offense for violations of the wage payment law, P.L.1965, c.173 (C.34:11-4.1 et seq.) applies to knowing failure to fully pay wages agreed to or required by article 1 of chapter 11 of Title 34 of the Revised Statute and all acts supplementing that article, and to any employer retaliation against an employer seeking relief under those laws.

3. Reduce the punishments under the wage payment laws and the minimum wage law for a third and subsequent violation from a fine of not less than \$2,000 or more than \$10,000 and imprisonment of up to 18 months down to a fine of not less than \$1,000 or more than \$2,000 and imprisonment of not less than 10 days or more than 100 days, and remove the requirement that the violator pay the costs of action.

4. Specify that in a case of an employee taking a civil action under the bill against an employer who takes an adverse action against an employee seeking relief under those laws, there is a rebuttable presumption that the adverse action is retaliation if it occurs within 90 days of the seeking of relief, and the court shall require the employer to offer reinstatement if the employee was discharged.

5. Have the bill's extension of the statute of limitations to six years apply to unlawful discharge or other retaliation.

6. Establish the crime of a “pattern of wage non-payment” when an employer knowingly violates, for a third or subsequent time, a range of specified laws regarding wage payment, minimum wage, and theft when the property stolen is unpaid wages. The crime of pattern of wage non-payment is deemed a crime of the third degree, which is subject to punishment of between three and five years of imprisonment and up to \$15,000 in fines.

7. Change the rate of liquidated damages provided in the bill from 200 percent of wages due or lost to not more than 200 percent of those wages in criminal actions and other actions taken by the department, but retains the rate of 200 percent in civil actions taken by aggrieved employees.

8. Eliminate the provision that contracts by the department with community-based organizations or legal services organizations may authorize the organizations to investigate, prepare or represent workers in wage actions and eliminate the provision that organizations be awarded 50 percent of fees or penalties collected in wage actions.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill will result in indeterminate annual increases in administrative, enforcement, and incarceration expenditures to the State; and indeterminate annual increases in State revenue collected from certain new and expanded criminal and administrative penalties.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 2903

with Assembly Floor Amendments
(Proposed by Assemblywoman QUIJANO)

ADOPTED: JUNE 10, 2019

These amendments:

1. Provide that with respect to a civil action taken by an employee under the bill, the payment of liquidated damages is not required for a first violation by an employer who demonstrates that the employer's action was taken in good faith with reasonable grounds for believing that the action was not a violation, and the employer admits the violation and pays the amount owed within 30 days;
2. Provide that, for subsequent violations, the liquidated damages are for an amount of not more than 200 percent of the wages due, instead of requiring that they are always a full 200 percent of the wages due; and
3. Remove all reference to small claims courts.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 2903

STATE OF NEW JERSEY

SUMMARY

- Synopsis:** Concerns law regarding failure to pay wages.
- Type of Impact:** Annual expenditure and revenue increases to State General Fund.
- Agencies Affected:** Department of Labor and Workforce Development; Department of Law and Public Safety; and Judiciary.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill will result in indeterminate annual increases in administrative, enforcement, and incarceration expenditures to the State, and indeterminate annual increases in State revenue collected from certain new and expanded criminal and administrative penalties.

BILL DESCRIPTION

This bill assists workers aggrieved by certain violations of laws regarding the payment of wages by strengthening enforcement procedures, remedies and a variety of criminal, civil and administrative sanctions against the violators.

Upon conviction for a first violation of a wage payment law subject to the bill, an employer is punishable by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment. Upon conviction for a second or subsequent violation, an employer is punishable by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment.

Additionally, a violator can be required to pay the employee wages owed, plus liquidated damages equal to 200 percent of the wages owed in a civil action brought by the employee. The bill also provides that an employer who is found to have retaliated against an employee for bringing a claim under the statute commits a disorderly persons offense and is liable to the employee for wages lost because of the retaliation plus damages equal to not more than 200 percent of those wages. No payment of wages or damages pursuant to this bill shall result in a violator paying wages owed or damages more than one time for the same violation.

Upon issuing a decision finding wages due to a worker are equal to or greater than \$5,000, the commissioner must inform the employer that the commissioner will conduct an audit of the employer or any successor firm of the employer and notify the Division of Taxation of the decision and recommend that the division conduct an audit of the employer to ensure the proper withholding and payment of payroll and other taxes.

The bill further enhances enforcement procedures and remedies by extending certain remedies currently available to workers who are victims of violations of the State's minimum wage law to workers who are victims of violations of the State's wage payment laws. Specifically, the bill extends the remedies provided to employees by the minimum wage law in cases of employer retaliation to cover employer retaliation under the wage payment law, and provides the same opportunity for workers aggrieved by violations of the wage payment law to bring a civil action as workers are provided for violations of the minimum wage law.

The bill also directs the commissioner, in the case of employers who fail to maintain required records and make required tax, benefit and wage payments, to conduct audits of employers and suspend or revoke business licenses of employers who are found in subsequent audits to have continued the violations. The bill amends that law to require the commissioner to use that law's remedies when notified by the Attorney General of a conviction. In addition, the bill provides that if an employer fails to comply with a final determination of the commissioner or a court judgement to pay wages owed or related damages within 10 days, the commissioner may order license suspensions, or issue a stop work order, until the failure is corrected.

The bill permits the Department of Labor and Workforce Development to contract with community-based and legal services organizations to disseminate information to workers and assist workers aggrieved by violations of State wage and hour laws.

The bill requires employers to provide current and newly hired employees a written copy of the statement produced by the department of the employee's rights under the bill, with an explanation of how to file a claim or take other actions with regard to wage violations.

The bill requires the commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, to produce an annual report on the enforcement of wage and hour laws with recommendations to improve enforcement, and place on a website information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws during the preceding period of not less than 12 months.

Finally, the bill establishes the crime of a "pattern of wage non-payment" when an employer knowingly violates, for a third or subsequent time, a range of specified laws regarding wage payment, minimum wage, and theft when the property stolen is unpaid wages. The crime of pattern of wage non-payment is classified as a crime of the third degree. A crime of the third degree is ordinarily punishable by a term of imprisonment of three to five years or a fine of up to \$15,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will result in indeterminate annual increases in enforcement and administrative costs to the State, which will partially, or fully, be offset by indeterminate

annual increases in revenue collected from certain new and expanded criminal and administrative penalties.

The Division of Wage and Hour Compliance within the DOLWD administers and enforces New Jersey State labor laws, including those regarding the failure to pay wages by an employer. According to the department, the division has an estimated 59 employees managing an estimated 4,016 violations resulting from complaints in fiscal year 2018.

The bill expands existing enforcement actions available to the department, broadens the scope of wage replacement claims that may be filed with the department, and requires the department to provide certain information and reports to the public. These provisions, as well as a potential rise in the volume of claims submitted to the department as a result thereof, will likely result in an indeterminate annual expenditure increase to the State. However, the OLS is unable to quantify the additional expenses or the number of additional claims. Depending on DOLWD operating decisions, however, a portion of the added costs may be absorbed into the department's existing operating budget.

The additional operating expenses will likely be offset partially, if not fully, by revenue collected from certain new and expanded criminal and administrative penalties. The OLS cannot determine, however, the additional number of claims that will result in violations, and therefore the additional amount of penalties to be collected under this bill.

The bill also permits the department to enter into contracts with community-based legal services organizations to disseminate information regarding State wage and hour laws, and to help or represent employees in wage theft actions.

Finally, the bill permits employees to bring an action in small claims court if the unpaid wages do not exceed court jurisdictional limits. As a result, the Judiciary may incur an annual cost increase to the extent that the caseload of small claims courts may rise. The OLS does not have information to determine the number of cases and, therefore, the associated costs.

Section: Commerce, Labor and Industry

*Analyst: Juan C. Rodriguez
Associate Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

ASSEMBLY, No. 2903

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JULY 2, 2019

SUMMARY

- Synopsis:** Concerns law regarding failure to pay wages.
- Type of Impact:** Annual expenditure and revenue increases to State General Fund.
- Agencies Affected:** Department of Labor and Workforce Development; Department of Law and Public Safety; and The Judiciary.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill will result in indeterminate annual increases in administrative, enforcement, and incarceration expenditures to the State, and indeterminate annual increases in State revenue collected from certain new and expanded criminal and administrative penalties.

BILL DESCRIPTION

This bill assists workers aggrieved by certain violations of laws regarding the payment of wages by strengthening enforcement procedures, remedies and a variety of criminal, civil and administrative sanctions against the violators.

Upon conviction for a first violation of a wage payment law subject to the bill, an employer is punishable by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment. Upon conviction for a second or subsequent violation, an employer is punishable by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment.

Additionally, the bill permits an aggrieved employee to bring a civil action, wherein a violator can be required to pay wages owed, plus liquidated damages equal to not more than 200

percent of the wages. However, payment of liquidated damages is not required for a first violation if the employer demonstrates that the action was taken in good faith and reasonable grounds for believing the action was not a violation of the bill, the employer admits the violation, and the employer pays the amount owed within 30 days. The bill also provides that an employer who is found to have retaliated against an employee for bringing a claim under the statute commits a disorderly persons offense and is liable to the employee for wages lost because of the retaliation plus damages equal to not more than 200 percent of those wages. No payment of wages or damages pursuant to this bill shall result in a violator paying wages owed or damages more than one time for the same violation.

Upon issuing a decision finding wages due to a worker are equal to or greater than \$5,000, the commissioner must inform the employer that the commissioner will conduct an audit of the employer or any successor firm of the employer and notify the Division of Taxation of the decision and recommend that the division conduct an audit of the employer to ensure the proper withholding and payment of payroll and other taxes.

The bill further enhances enforcement procedures and remedies by extending certain remedies currently available to workers who are victims of violations of the State's minimum wage law to workers who are victims of violations of the State's wage payment laws. Specifically, the bill extends the remedies provided to employees by the minimum wage law in cases of employer retaliation to cover employer retaliation under the wage payment law, and provides the same opportunity for workers aggrieved by violations of the wage payment law to bring a civil action as workers are provided for violations of the minimum wage law.

The bill also directs the commissioner, in the case of employers who fail to maintain required records and make required tax, benefit and wage payments, to conduct audits of employers and suspend or revoke business licenses of employers who are found in subsequent audits to have continued the violations. The bill amends that law to require the commissioner to use that law's remedies when notified by the Attorney General of a conviction. In addition, the bill provides that if an employer fails to comply with a final determination of the commissioner or a court judgement to pay wages owed or related damages within 10 days, the commissioner may order license suspensions, or issue a stop work order, until the failure is corrected.

The bill permits the Department of Labor and Workforce Development (DOLWD) to contract with community-based and legal services organizations to disseminate information to workers and assist workers aggrieved by violations of State wage and hour laws.

The bill requires employers to provide current and newly hired employees a written copy of the statement produced by the department of the employee's rights under the bill, with an explanation of how to file a claim or take other actions with regard to wage violations.

The bill requires the commissioner, in consultation with the Administrative Director of the Courts and the Attorney General, to produce an annual report on the enforcement of wage and hour laws with recommendations to improve enforcement, and place on a website information regarding each wage claim in which an employer was found to have been in violation of one or more State wage and hour laws during the preceding period of not less than 12 months.

Finally, the bill establishes the crime of a "pattern of wage non-payment" when an employer knowingly violates, for a third or subsequent time, a range of specified laws regarding wage payment, minimum wage, and theft when the property stolen is unpaid wages. The crime of pattern of wage non-payment is classified as a crime of the third degree. A crime of the third degree is ordinarily punishable by a term of imprisonment of three to five years or a fine of up to \$15,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will result in indeterminate annual increases in enforcement and administrative costs to the State, which will partially, or fully, be offset by indeterminate annual increases in revenue collected from certain new and expanded criminal and administrative penalties.

The Division of Wage and Hour Compliance within the DOLWD administers and enforces New Jersey State labor laws, including those regarding the failure to pay wages by an employer. According to the department, the division has an estimated 59 employees managing an estimated 4,016 violations resulting from complaints in fiscal year 2018.

The bill expands existing enforcement actions available to the department, broadens the scope of wage replacement claims that may be filed with the department, and requires the department to provide certain information and reports to the public. These provisions, as well as a potential rise in the volume of claims submitted to the department as a result thereof, will likely result in an indeterminate annual expenditure increase to the State. However, the OLS is unable to quantify the additional expenses or the number of additional claims. Depending on DOLWD operating decisions, however, a portion of the added costs may be absorbed into the department's existing operating budget.

The additional operating expenses will likely be offset partially, if not fully, by revenue collected from certain new and expanded criminal and administrative penalties. The OLS cannot determine, however, the additional number of claims that will result in violations, and therefore the additional amount of penalties to be collected under this bill.

The bill also permits the department to enter into contracts with community-based legal services organizations to disseminate information regarding State wage and hour laws, and to help or represent employees in wage theft actions.

Finally, the bill permits employees to bring a civil action for alleged violations under the bill. As a result, the Judiciary may incur an annual cost increase to the extent that the caseload of courts may rise. The OLS does not have information to determine the number of cases and, therefore, the associated costs.

Section: Commerce, Labor and Industry

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Acting Governor Oliver Signs Legislation to Protect New Jersey Workers from Wage Theft

08/06/2019

TRENTON – Acting Governor Sheila Oliver today signed S1790 into law, which will help ensure workers in New Jersey are able to bring home the wages they earn without fear of theft. This bill enhances enforcement of New Jersey’s wage and hour laws by holding employers accountable for unpaid wages, benefits, or overtime as required by law through increased damages and fines, which make victims of wage theft eligible to receive both the wages owed and liquidated damages of 200 percent of wages owed.

“We must ensure that every hardworking individual in New Jersey receives the wages they worked hard to earn,” **said Acting Governor Sheila Oliver**. “I am proud to sign this legislation that will protect the rights of workers, furthering the Murphy-Oliver Administration’s commitment to build a stronger and fairer New Jersey through protecting the right to earn a fair wage.”

“In signing this legislation, the Murphy Administration sends a clear message to workers that we have their backs and will protect them from being disciplined for reporting unpaid wages. And, it sends a clear message to the vast majority of businesses that we are aggressively pursuing their dishonest competitors with penalties for wage theft that are now stronger than ever,” **said Labor Commissioner Robert Asaro-Angelo**. “Thanks to the Legislature, worker advocates, and this administration, today is a very good day for New Jersey’s workers and employers.”

Primary sponsors of the bill include Senators Loretta Weinberg and Linda Greenstein, and Assemblymembers Annette Quijano, Pamela Lampitt, and Wayne DeAngelo.

“Wage theft is immoral, intolerable and yet, far too common,” **said Senator Loretta Weinberg**. “More often than not, it is those at the lowest rungs of our socioeconomic ladder that are taken advantage of by their employer. It falls on us, therefore, to defend those who don’t generally have the means to defend themselves. In July, we took our first step to a \$15 minimum wage but if we didn’t take care to ensure New Jersey employees receive their rightful wage, we would fail many of those we are trying to lift up. Giving employees greater power and protections is an important step in the path towards everyone earning a living wage.”

“The unscrupulous employers robbing the hard working people of New Jersey of their time and money need to face the consequences of their actions,” **said Senator Linda Greenstein**. “When wage theft is apparent, there must be effective laws in place to protect the workers of our state and to punish the employers. Wage theft is a serious crime and it is about time that our laws reflect this.”

“Workers across New Jersey deserve laws that works in their best interest,” **said Assemblywoman Annette Quijano**. “This law does just that. Employees in New Jersey are to be treated fairly and legally, with absolutely no exceptions. I am proud to fight for workers’ rights in New Jersey and to sponsor this legislation which I know will benefit workers across the state.”

“Every individual employed in New Jersey is entitled to the legal wages their employer has agreed to pay them, including overtime,” **said Assemblywoman Pamela Lampitt**. “In order for New Jersey to prosper in the ways we know are possible, we must put New Jersey workers first, and I am honored to sponsor an important piece of legislation which shows we have the backs of our workforce.”

“Above all else, this law is about workers’ rights,” **said Assemblyman Wayne DeAngelo**. “Employers in New Jersey should be held to a high standard to treat their employees with the decency and legality they deserve. No one should be withheld one penny of the wages they are legally entitled to.”

“Today, New Jersey signed into law some of the strongest anti-wage theft protections in the country. No worker should fear that their employer will steal their hard earned wages by failing to pay overtime or hourly wages. For too long, unscrupulous employers were rewarded by New Jersey state law. That stops today. This is a victory for workers, for our economy and for fairness. On behalf of Make the Road New Jersey, I would like to express our gratitude to Governor Murphy, Lt. Gov Sheila Oliver, Assemblywoman Quijano and Senator Weinberg for their years of commitment to ensuring the anti-wage theft bill becomes law” **said Roberto Sanchez, a member of Make the Road New Jersey**, a community-based immigrant and workers rights organization based in Elizabeth and Passaic.

“A day of work is a day paid. There is no middle ground,” **said Lou Kimmel, Executive Director of New Labor in New Jersey.** “Millions of unpaid wages result in a lack of reinvestment into local economies. When wages are stolen we all lose. With this law, we all win.”

“New Jersey workers lose out on millions that they are rightfully owed every year due to wage theft,” **said Brandon McKoy, President of New Jersey Policy Perspective.** “Whether it’s unpaid overtime or stolen tips, wage theft often harms low-paid workers already struggling to get by. The new law signed by Acting Governor Sheila Oliver follows best practices from across the nation and will make New Jersey a national leader in protecting workers from abusive and illegal cost-cutting measures. Tighter enforcement not only benefits workers, but businesses as well, as it levels the playing field for employers who already do the right thing and follow the law.”