

56:8-1.2

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 15

NJSA: 56:8-1.2 (Concerns withholding and diversion of wages by temporary help service firms)

BILL NO: A2984 (Substituted for S2164)

SPONSOR(S) Wisniewski and Others

DATE INTRODUCED: May 11, 2006

COMMITTEE: **ASSEMBLY:** Labor
 SENATE: Labor

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** July 8, 2006
 SENATE: December 11, 2006

DATE OF APPROVAL: January 24, 2007

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Assembly Committee Substitute enacted)

A2984

[SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **[ASSEMBLY:](#)** [Yes](#)

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

S2164

[SPONSOR'S STATEMENT:](#) (Begins on page 2 of original bill) [Yes](#)

COMMITTEE STATEMENT: **[ASSEMBLY:](#)** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH 3/27/08

P.L. 2007, CHAPTER 15, *approved January 24, 2007*
Assembly Committee Substitute for
Assembly, No. 2984

1 **AN ACT** concerning the withholding and diversion of wages by a
2 temporary help service firm and supplementing P.L.1960,
3 c.39(C.56:8-1 et seq.).
4

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

8 1. It shall be an unlawful practice for a temporary help service
9 firm, as the term is used in P.L.1969, c.39 (C.56:8-1 et seq.),
10 section 14 of P.L.1981, c.1 (C.56:8-1.1) and P.L.1989, c.331
11 (C.34:8-43 et seq.), to willfully withhold or divert wages for any
12 purpose not expressly permitted by section 4 of P.L.1965, c.173
13 (C.34:11-4.4). In addition to any fine or penalty, the Attorney
14 General may refuse to issue or renew, and may suspend or revoke a
15 firm's registration to operate as a temporary help service firm for
16 the purposes of P.L.1969, c.39 (C.56:8-1 et seq.), section 14 of
17 P.L.1981, c.1 (C.56:8-1.1), P.L.1989, c.331 (C.34:8-43 et seq.) and
18 related regulations for a violation of this section. A refusal,
19 suspension or revocation shall not be made except upon reasonable
20 notice to, and the opportunity to be heard by, the applicant or
21 registrant.
22

23 2. This act shall take affect immediately.
24
25

26 _____
27
28 Concerns withholding and diversion of wages by temporary help
29 service firms.

ASSEMBLY, No. 2984

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 11, 2006

Sponsored by:

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblyman ROBERT M. GORDON

District 38 (Bergen)

SYNOPSIS

Concerns civil actions regarding unauthorized wage withholdings or diversions and unpaid wages.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/2/2006)

1 AN ACT concerning civil actions regarding unauthorized wage
2 withholdings or diversions and unpaid wages, supplementing
3 P.L.1965, c.173 (C.34:11-4.1 et seq.) and amending P.L.1966,
4 c.113.

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

8
9 1. (New section) If an employer fails to pay an employee any
10 amount of wages due pursuant to Article 1 of chapter 11 of Title 34
11 of the Revised Statutes, including a failure to pay due to a
12 withholding or diversion of wages for any purpose not expressly
13 permitted by section 4 of P.L.1965, c.173 (C.34:11-4.4), the
14 employee may recover in a civil action the full amount of the wages
15 and an additional amount equal to twice as much as the amount of
16 the unpaid wages as liquidated damages, plus costs and reasonable
17 attorney's fees as determined by the court, except that an agreement
18 of the employee to accept payment of the unpaid wages supervised
19 by the commissioner pursuant to section 9 of P.L.1965, c.173
20 (C.34:11-4.9) or section 40 of P.L.1953, c.33 (C.34:11-58) shall,
21 upon payment in full, constitute a waiver of any right of the
22 employee to receive liquidated damages pursuant to this section.
23 An employee shall be entitled to maintain the action for and on
24 behalf of himself or other employees similarly situated, and the
25 employee and employees may designate an agent or representative
26 to maintain the action for and on behalf of all employees similarly
27 situated. The employee may bring the action to recover unpaid
28 wages pursuant to this section in the Superior Court, and may bring
29 the action in the Division of Small Claims of the Special Civil Part
30 of the Superior Court if the sum of the unpaid wages and the
31 liquidated damages does not exceed the jurisdictional limits of the
32 Division of Small Claims.

33 At the request of any employee not paid the wages to which the
34 employee was entitled under the provisions of Article 1 of chapter
35 11 of Title 34 of the Revised Statutes, the commissioner may take
36 an assignment of the wage claim in trust for the assigning employee
37 and may bring any legal action necessary to collect the claim, and
38 the employer shall be required to pay to the employee the unpaid
39 wages and liquidated damages equal to twice the amount of the
40 unpaid wages and pay to the commissioner the costs and reasonable
41 attorney's fees as determined by the court.

42
43 2. (New section) a. Any employer who discharges or
44 discriminates against an employee because the employee makes a
45 complaint to the employer, the commissioner, the director or their

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 authorized representatives that the employer failed to pay the
2 employee wages as required by the provisions of Article 1 of
3 chapter 11 of Title 34 of the Revised Statutes, including wages
4 unpaid because the wages were withheld or diverted in violation of
5 section 4 of P.L.1965, c.173 (C.34:11-4.4), or because the employee
6 causes to be instituted any proceeding under or related to Article 1
7 of chapter 11 of Title 34 of the Revised Statutes, or testifies in the
8 proceeding, shall be guilty of a disorderly persons offense, be fined
9 not less than \$100 nor more than \$1,000 and be required to offer
10 reinstatement in employment to the discharged employee, correct
11 any discriminatory action, and pay to the employee all wages lost
12 because of the discharge or discriminatory action, under penalty of
13 contempt proceedings.

14 b. As an alternative to or in addition to any other sanctions
15 provided by law for violations of the provisions of subsection a. of
16 this section, the commissioner is authorized to assess and collect
17 administrative penalties, up to a maximum of \$250 for a first
18 violation and up to a maximum of \$500 for each subsequent
19 violation, specified in a schedule of penalties to be promulgated as a
20 rule or regulation by the commissioner in accordance with the
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
22 seq.). When determining the amount of the penalty imposed
23 because of a violation, the commissioner shall consider factors
24 which include the history of previous violations by the employer,
25 the seriousness of the violation, the good faith of the employer and
26 the size of the employer's business. No administrative penalty shall
27 be levied pursuant to this section unless the commissioner provides
28 the alleged violator with notification of the violation and of the
29 amount of the penalty by certified mail and an opportunity to
30 request a hearing before the commissioner or his designee within 15
31 days following the receipt of the notice. If a hearing is requested,
32 the commissioner shall issue a final order upon the hearing and a
33 finding that a violation has occurred. If no hearing is requested, the
34 notice shall become a final order upon expiration of the 15-day
35 period. Payment of the penalty shall be due when a final order is
36 issued or when the notice becomes a final order. Any penalty
37 imposed pursuant to this section may be recovered with costs in a
38 summary proceeding commenced by the commissioner pursuant to
39 the "Penalty Enforcement Law of 1999," P.L.1999, c.274
40 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty
41 pursuant to this section shall be applied toward enforcement and
42 administration costs of the Division of Workplace Standards in the
43 Department of Labor and Workforce Development.

44
45 3. Section 26 of P.L.1966, c.113 (C.34:11-56a25) is amended to
46 read as follows:

47 26. If any employee is paid by an employer less than the
48 minimum fair wage or overtime compensation to which [such] the

1 employee is entitled under the provisions of this act or by virtue of
2 a minimum fair wage order ~~such~~, the employee may recover in a
3 civil action the full amount of ~~such~~ that minimum wage less any
4 amount actually paid to him or her by the employer ~~together with~~
5 and an additional amount equal to twice as much as the amount of
6 the unpaid minimum wages and overtime compensation as
7 liquidated damages, plus costs and ~~such~~ reasonable attorney's
8 fees as ~~may be allowed~~ determined by the court, and any
9 agreement between ~~such~~ the employee and the employer to work
10 for less than ~~such~~ the minimum fair wage shall be no defense to
11 the action, except that an agreement of the employee to accept
12 payment of the unpaid wages or compensation supervised by the
13 commissioner pursuant to section 24 of P.L.1966, c.113 (C.34:11-
14 56a23) or section 40 of P.L.1953, c.33 (C.34:11-58) shall, upon
15 payment in full, constitute a waiver of any right of the employee to
16 receive liquidated damages pursuant to this section. An employee
17 shall be entitled to maintain ~~such~~ the action for and on behalf of
18 himself or other employees similarly situated, and ~~such~~ the
19 employee and employees may designate an agent or representative
20 to maintain ~~such~~ the action for and on behalf of all employees
21 similarly situated. The employee may bring the action to recover
22 unpaid minimum wages or overtime compensation pursuant to this
23 section in the Superior Court, and may bring the action in the
24 Division of Small Claims of the Special Civil Part of the Superior
25 Court if the sum of the amount of unpaid minimum wages or
26 overtime compensation and the amount of liquidated damages does
27 not exceed the jurisdictional limits of the Division of Small Claims.

28 At the request of any employee paid less than the minimum wage
29 or overtime compensation to which ~~such~~ the employee was
30 entitled under the provisions of this act or under an order, the
31 commissioner may take an assignment of the wage claim in trust for
32 the assigning employee and may bring any legal action necessary to
33 collect the claim, and the employer shall be required to pay to the
34 employee the unpaid wages and overtime compensation and
35 liquidated damages equal to twice the amount of the unpaid wages
36 and pay to the commissioner the costs and ~~such~~ reasonable
37 attorney's fees as ~~may be allowed~~ determined by the court.

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

39

40 4. This act shall take effect immediately and apply to causes of
41 action occurring on or after that date.

42

43

44

STATEMENT

45

46 This bill permits a worker whose employer has not paid wages in
47 violation of the wage payment law, P.L.1965, c.173 (C.34:11-4.1 et

1 seq.), including wages unpaid because the wages were withheld or
2 diverted in violation of section 4 of that law (C.34:11-4.4), to
3 recover, in a civil action undertaken by the worker or the
4 commissioner, all unpaid wages, including those in excess of the
5 minimum wage, as well as liquidated damages equal to twice the
6 amount of unpaid wages. Current law does not permit a worker to
7 bring a civil action to recover unpaid wages in excess of the
8 minimum wage.

9 In addition, the bill permits a worker who has not been paid
10 required minimum wages or overtime compensation to recover in a
11 civil action liquidated damages equal to twice the amount of unpaid
12 minimum wages and overtime, in addition to the unpaid wages and
13 overtime which the law currently permits the worker to recover in a
14 civil action. The bill also provides for the payment of that amount
15 of liquidated damages to a worker who chooses to have the
16 Commissioner of Labor and Workforce Development bring the
17 legal action for the unpaid wages.

18 The worker's right to liquidated damages is waived under the bill
19 if the worker agrees to accept payment of the wages, minimum
20 wages or overtime compensation supervised by the Commissioner
21 of Labor and Workforce Development, once the payment is made in
22 full.

23 The bill permits a worker to bring an action under its provisions
24 in Superior Court, or, when appropriate, the Division of Small
25 Claims of the Superior Court, Law Division, Special Civil Part.

26 Finally, the bill extends the protections against employer
27 retaliation currently provided to workers who make complaints in
28 minimum wage and overtime cases to workers who make
29 complaints in cases of wage non-payment or wage diversion.

30 The provisions of the bill regarding civil actions in minimum
31 wage and overtime cases are similar to certain provisions of section
32 216 of the federal Fair Labor Standards Act, 29 U.S.C.216
33 ("FLSA"), which permit workers who are not paid the required
34 minimum wage or overtime to take action and receive "their unpaid
35 minimum wages, or their unpaid overtime compensation, as the case
36 may be, and in an additional equal amount as liquidated damages."
37 The federal law further provides that the U.S. Secretary of Labor
38 may supervise the payment of unpaid wages of overtime, and that
39 the agreement of a worker to accept such supervised payments,
40 "upon payment in full," terminates the workers' right to take an
41 action on their own. The principal difference between these
42 provisions of the FLSA and the relevant provisions of the bill is that
43 the bill provides for added liquidated damages of two times the
44 unpaid amount, while the FLSA provides for liquidated damages
45 equal to one times the unpaid amount. Section 218 of the FLSA
46 provides that the FLSA does not preempt more stringent standards
47 at the state or local level.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2984

STATE OF NEW JERSEY

DATED: JUNE 1, 2006

The Assembly Labor Committee reports favorably the Assembly Committee Substitute for Assembly Bill No. 2894.

This Assembly Committee Substitute makes it an unlawful practice for a temporary help service firm to willfully withhold or divert wages for any purpose not expressly permitted by section 4 of P.L.1965, c.173 (C.34:11-4.4), and permits the Attorney General, in addition to any fine or penalty, to refuse to issue or renew, or to suspend or revoke, the firm's registration to operate as a temporary help service firm. The refusal, suspension or revocation may not be made without reasonable notice to, and the opportunity to be heard by, the applicant or registrant.

SENATE LABOR COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2984

STATE OF NEW JERSEY

DATED: OCTOBER 16, 2006

The Senate Labor Committee reports favorably the Assembly Committee Substitute for Assembly Bill No. 2984.

This bill makes it an unlawful practice for a temporary help service firm to willfully withhold or divert wages for any purpose not expressly permitted by section 4 of P.L.1965, c.173 (C.34:11-4.4), and permits the Attorney General, in addition to any fine or penalty, to refuse to issue or renew, or to suspend or revoke, the firm's registration to operate as a temporary help service firm. The refusal, suspension or revocation may not be made without reasonable notice to, and the opportunity to be heard by, the applicant or registrant.

As reported, this bill is identical to Senate Bill No. 2164.

SENATE, No. 2164

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED SEPTEMBER 18, 2006

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator NICHOLAS J. SACCO

District 32 (Bergen and Hudson)

SYNOPSIS

Concerns withholding and diversion of wages by temporary help service firms.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the withholding and diversion of wages by a
2 temporary help service firm and supplementing P.L.1960,
3 c.39(C.56:8-1 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
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8 1. It shall be an unlawful practice for a temporary help service
9 firm, as the term is used in P.L.1969, c.39 (C.56:8-1 et seq.),
10 section 14 of P.L.1981, c.1 (C.56:8-1.1) and P.L.1989, c.331
11 (C.34:8-43 et seq.), to willfully withhold or divert wages for any
12 purpose not expressly permitted by section 4 of P.L.1965, c.173
13 (C.34:11-4.4). In addition to any fine or penalty, the Attorney
14 General may refuse to issue or renew, and may suspend or revoke a
15 firm's registration to operate as a temporary help service firm for
16 the purposes of P.L.1969, c.39 (C.56:8-1 et seq.), section 14 of
17 P.L.1981, c.1 (C.56:8-1.1), P.L.1989, c.331 (C.34:8-43 et seq.) and
18 related regulations for a violation of this section. A refusal,
19 suspension or revocation shall not be made except upon reasonable
20 notice to, and the opportunity to be heard by, the applicant or
21 registrant.
22

23 2. This act shall take effect immediately.
24
25

26 STATEMENT
27

28 This bill makes it an unlawful practice for a temporary help
29 service firm to willfully withhold or divert wages for any purpose
30 not expressly permitted by section 4 of P.L.1965, c.173 (C.34:11-
31 4.4), and permits the Attorney General, in addition to any fine or
32 penalty, to refuse to issue or renew, or to suspend or revoke, the
33 firm's registration to operate as a temporary help service firm. The
34 refusal, suspension or revocation may not be made without
35 reasonable notice to, and the opportunity to be heard by, the
36 applicant or registrant.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2164

STATE OF NEW JERSEY

DATED: OCTOBER 16, 2006

The Senate Labor Committee reports favorably Senate Bill No. 2164.

This bill makes it an unlawful practice for a temporary help service firm to willfully withhold or divert wages for any purpose not expressly permitted by section 4 of P.L.1965, c.173 (C.34:11-4.4), and permits the Attorney General, in addition to any fine or penalty, to refuse to issue or renew, or to suspend or revoke, the firm's registration to operate as a temporary help service firm. The refusal, suspension or revocation may not be made without reasonable notice to, and the opportunity to be heard by, the applicant or registrant.

As reported, this bill is identical to the Assembly Committee Substitute for Assembly Bill No. 2984.