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LAW/RWH

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2773

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED JUNE 15, 2009

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Co-Sponsored by:

Senator Baroni, Assemblywomen Rodriguez and Greenstein

SYNOPSIS

Concerns suspension and revocation of employer licenses for repeated violations of wage, benefit and tax laws.

CURRENT VERSION OF TEXT

As amended by the Senate on January 7, 2010.



(Sponsorship Updated As Of: 1/12/2010)

1 **AN ACT** concerning the suspension or revocation of certain licenses
2 for certain repeated violations of laws regarding wages, benefits
3 and taxes, and supplementing Title 34 of the Revised Statutes.
4

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

7
8 1. As used in this act:

9 "Agency" means any agency, department, board or commission
10 of this State, or of any political subdivision of this State, that issues
11 a license for purposes of operating a business in this State.

12 "Commissioner" means the Commissioner of Labor and
13 Workforce Development.

14 "License" means any agency permit, certificate, approval,
15 registration, charter or similar form of authorization that is required
16 by law and that is issued by any agency for the purposes of
17 operating a business in this State, and includes, but is not limited to:

18 (1) A certificate of incorporation pursuant to the "New Jersey
19 Business Corporation Act," N.J.S.14A:1-1 et seq.;

20 (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

21 (3) A statement of qualification or a statement of foreign
22 qualification pursuant to the "Uniform Partnership Act (1996),"
23 P.L.2000, c.161 (C.42:1A-1 et al.);

24 (4) A certificate of limited partnership or a certificate of
25 authority pursuant to the "Uniform Limited Partnership Law
26 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

27 (5) A certificate of formation or certified registration pursuant
28 to the "New Jersey Limited Liability Company Act," P.L.1993,
29 c.210 (C.42:2B-1 et seq.); and

30 (6) Any license, certificate, permit or registration pursuant to
31 R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey
32 Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of
33 P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.);
34 section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of
35 P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor
36 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

37 "State wage, benefit and tax laws" means:

38 (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

39 (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150
40 (C.34:11-56.25 et seq.);

41 (3) The "New Jersey State Wage and Hour Law," P.L.1966,
42 c.113 (C.34:11-56a et seq.);

43 (4) The workers' compensation law, R.S.34:15-1 et seq.;

44 (5) The "unemployment compensation law," R.S.43:21-1 et seq.;

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted December 10, 2009.

² Senate floor amendments adopted January 7, 2010.

1 (6) The "Temporary Disability Benefits Law," P.L.1948, c.110
2 (C.43:21-25 et al.);

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

4 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
5 seq.

6
7 2. a. If the commissioner determines that an employer has
8 failed, for one or more of its employees, to maintain and report ²[all
9 records] every record² regarding wages, benefits and taxes which
10 the employer is required to maintain and report pursuant to State
11 wage, benefit and tax laws, as defined in section 1 of this act, and
12 has, in connection with that failure to maintain or report the records,
13 failed to pay wages, benefits, taxes or other contributions or
14 assessments as required by those laws, the commissioner shall, as
15 an alternative to, or in addition to, any other actions taken in the
16 enforcement of those laws, notify the employer of the determination
17 and have an audit of the employer and any successor firm of the
18 employer conducted not more than 12 months after the
19 determination.

20 b. If, in an audit conducted pursuant to subsection a. of this
21 section, the commissioner determines that the employer or any
22 successor firm to the employer has continued in its failure to
23 maintain or report records as required by those laws and continued
24 in its failure to pay wages, benefits, taxes or other contributions or
25 assessments as required by those laws, the commissioner:

26 (1) May, after affording the employer or successor firm notice
27 and an opportunity for a hearing in accordance with the provisions
28 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
29 1 et seq.), issue a written determination directing any appropriate
30 agency to suspend any one or more licenses that are held by the
31 employer or successor firm, for a period of time determined by the
32 commissioner. In determining the length of a suspension, the
33 commissioner shall consider any of the following factors which are
34 relevant:

35 (a) The number of employees for which the employer or
36 successor firm failed to maintain or report required records and pay
37 required wages, benefits, taxes or other contributions or
38 assessments;

39 (b) The total amount of wages, benefits, taxes or other
40 contributions or assessments not paid by the employer or successor
41 firm;

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

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

45 (e) The duration of the violation;

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

1 (g) Any prior misconduct by the employer or successor firm;
2 and

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

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

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

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

25 ¹e. In instances where an employee leasing company has
26 entered into an employee leasing agreement with a client company
27 pursuant to P.L.2001, c.260 (C.34:8-67 et seq.), any written
28 determination by the commissioner directing agencies to suspend an
29 employer license pursuant to subsection b. of this section, or revoke
30 an employer license pursuant to subsection c. of this section, for a
31 failure or continued failure to keep records regarding, and to pay,
32 wages, benefits and taxes pursuant to State wage, benefit and tax
33 laws, shall be for the suspension or revocation of the licenses of the
34 client company and not the licenses of the employee leasing
35 company if the commissioner determines that the failure or
36 continued failure was caused by incomplete, inaccurate, misleading,
37 or false information provided to the employee leasing company by
38 the client company. Nothing in this subsection shall be construed
39 as diminishing or limiting the authority or obligation of the
40 commissioner to rescind the registration of an employee leasing
41 company pursuant to the provisions of section 10 of P.L.2001,
42 ²[c.282] 260²(C.34:8-76).¹

43

44 3. A rebuttable presumption that an employer has established a
45 successor firm shall arise if the two parties share two or more of the
46 following capacities or characteristics:

47 a. Performing similar work within the same geographical area;

- 1 b. Occupying the same premises;
- 2 c. Having the same telephone or fax number;
- 3 d. Having the same e-mail address or Internet website;
- 4 e. Employing substantially the same work force, administrative
- 5 employees, or both;
- 6 f. Utilizing the same tools, equipment or facilities;
- 7 g. Employing or engaging the services of any person or persons
- 8 involved in the direction or control of the other; or
- 9 h. Listing substantially the same work experience.

10

11 4. a. Each employer which is required to maintain and report
12 records regarding wages, benefits, taxes and other contributions and
13 assessments pursuant to State wage, benefit and tax laws, as defined
14 in section 1 of this act, shall conspicuously post notification, in a
15 place or places accessible to all employees in each of the employer's
16 workplaces, in a form issued by regulation adopted by the
17 commissioner, of the obligation of the employer to maintain and
18 report those records. The employer shall also provide each
19 employee a written copy of the notification not later than 30 days
20 after the form of the notification is issued, or, if the employee is
21 hired after the issuance, at the time of the employee's hiring. In
22 adopting the regulation regarding the notification requirement, the
23 commissioner shall, to the greatest extent practicable, design the
24 notification in a manner which coordinates or consolidates the
25 notification with any other notifications required pursuant to State
26 wage, benefit and tax laws, as defined in section 1 of this act. The
27 notification shall also provide information on how an employee or
28 the employee's authorized representative, may contact, by
29 telephone, mail and e-mail, a representative of the commissioner to
30 provide information to, or file a complaint with, the representative
31 regarding possible violations of the requirements of this act or any
32 State wage, benefit and tax law, as defined in section 1 of this act,
33 or may obtain information about any actual violation, including any
34 audit undertaken pursuant to this act.

35 b. No employer shall discharge or in any other manner
36 discriminate against an employee because the employee has made
37 an inquiry or complaint to his employer, to the commissioner or to
38 his authorized representative regarding any possible violation by the
39 employer of the provisions of this act or any State wage, benefit and
40 tax laws, as defined in section 1 of this act, or because the employee
41 has caused to be instituted or is about to cause to be instituted any
42 proceeding under or related to this act or those laws, or because the
43 employee has testified or is about to testify in the proceeding.

44 c. Any employer who violates any provision of this section
45 shall be guilty of a disorderly persons offense and shall, upon
46 conviction, be fined not less than \$100 nor more than \$1,000. In
47 the case of a discharge or other discriminatory action in violation of

1 this section, the employer shall also be required to offer
2 reinstatement in employment to the discharged employee and to
3 correct any discriminatory action, and to pay to the employee all
4 reasonable legal costs of the action, all wages and benefits lost as a
5 result of the discharge or discriminatory action, plus punitive
6 damages equal to two times the lost wages and benefits, under
7 penalty of contempt proceedings for failure to comply with the
8 requirement.

9

10 5. This act shall take effect **'[immediately]** on the 180th day
11 after the date of enactment, except that the Commissioner of Labor
12 and Workforce Development shall take any anticipatory
13 administrative action in advance of the effective date as is necessary
14 for the implementation of this act.¹

SENATE, No. 2773

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 4, 2009

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns suspension and revocation of employer licenses for repeated violations of wage, benefit and tax laws.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/8/2009)

1 AN ACT concerning the suspension or revocation of certain licenses
2 for certain repeated violations of laws regarding wages, benefits
3 and taxes, and supplementing Title 34 of the Revised Statutes.

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

7
8 1. As used in this act:

9 "Agency" means any agency, department, board or commission
10 of this State, or of any political subdivision of this State, that issues
11 a license for purposes of operating a business in this State.

12 "Commissioner" means the Commissioner of Labor and
13 Workforce Development.

14 "License" means any agency permit, certificate, approval,
15 registration, charter or similar form of authorization that is required
16 by law and that is issued by any agency for the purposes of
17 operating a business in this State, and includes, but is not limited to:

18 (1) A certificate of incorporation pursuant to the "New Jersey
19 Business Corporation Act," N.J.S.14A:1-1 et seq.;

20 (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

21 (3) A statement of qualification or a statement of foreign
22 qualification pursuant to the "Uniform Partnership Act (1996),"
23 P.L.2000, c.161 (C.42:1A-1 et al.);

24 (4) A certificate of limited partnership or a certificate of
25 authority pursuant to the "Uniform Limited Partnership Law
26 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

27 (5) A certificate of formation or certified registration pursuant
28 to the "New Jersey Limited Liability Company Act," P.L.1993,
29 c.210 (C.42:2B-1 et seq.); and

30 (6) Any license, certificate, permit or registration pursuant to
31 R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey
32 Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of
33 P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.);
34 section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of
35 P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor
36 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

37 "State wage, benefit and tax laws" means:

38 (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

39 (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150
40 (C.34:11-56.25 et seq.);

41 (3) The "New Jersey State Wage and Hour Law," P.L.1966,
42 c.113 (C.34:11-56a et seq.);

43 (4) The workers' compensation law, R.S.34:15-1 et seq.;

44 (5) The "unemployment compensation law," R.S.43:21-1 et seq.;

45 (6) The "Temporary Disability Benefits Law," P.L.1948, c.110
46 (C.43:21-25 et al.);

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

1 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
2 seq.

3 2. a. If the commissioner determines that an employer has
4 knowingly failed, for one or more of its employees, to maintain and
5 report all records regarding wages, benefits and taxes which the
6 employer is required to maintain and report pursuant to State wage,
7 benefit and tax laws, as defined in section 1 of this act, and has, in
8 connection with that knowing failure to maintain or report the
9 records, knowingly failed to pay wages, benefits, taxes or other
10 contributions or assessments as required by those laws, the
11 commissioner, as an alternative to, or in addition to, any other
12 actions taken in the enforcement of those laws:

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

21 (a) The number of employees for which the employer failed to
22 maintain or report required records and pay required wages,
23 benefits, taxes or other contributions or assessments;

24 (b) The total amount of wages, benefits, taxes or other
25 contributions or assessments not paid by the employer;

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

27 (d) Whether the employer made good faith efforts to comply
28 with any applicable requirements;

29 (e) The duration of the violation;

30 (f) The role of the directors, officers or principals of the
31 employer in the violation;

32 (g) Any prior misconduct by the employer; and

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

34 (2) Shall conduct a subsequent audit or inspection of the
35 employer or any successor firm of the employer not more than six
36 months after the date of the commissioner's written determination.

37 b. If, in the subsequent audit or inspection conducted pursuant
38 to subsection a. of this section, the commissioner determines that
39 the employer or successor firm has continued to knowingly fail to
40 maintain or report records as required pursuant to State wage,
41 benefit and tax laws, as defined in section 1 of this act, and
42 continued to knowingly fail to pay wages, benefits, taxes or other
43 contributions or assessments as required by those laws, the
44 commissioner, after affording the employer or successor firm notice
45 and an opportunity for a hearing in accordance with the provisions
46 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
47 1 et seq.), shall issue a written determination directing any
48 appropriate agency to permanently revoke any one or more licenses

1 that are held by the employer or any successor firm to the employer
2 and that are necessary to operate the employer or successor firm.

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

7
8 3. A rebuttable presumption that an employer has established a
9 successor firm shall arise if the two parties share two or more of the
10 following capacities or characteristics:

- 11 a. Performing similar work within the same geographical area;
12 b. Occupying the same premises;
13 c. Having the same telephone or fax number;
14 d. Having the same e-mail address or Internet website;
15 e. Employing substantially the same work force, administrative
16 employees, or both;
17 f. Utilizing the same tools, equipment or facilities;
18 g. Employing or engaging the services of any person or persons
19 involved in the direction or control of the other; or
20 h. Listing substantially the same work experience.

21
22 4. a. Each employer which is required to maintain and report
23 records regarding wages, benefits, taxes and other contributions and
24 assessments pursuant to State wage, benefit and tax laws, as defined
25 in section 1 of this act, shall conspicuously post notification, in a
26 place or places accessible to all employees in each of the employer's
27 workplaces, in a form issued by regulation adopted by the
28 commissioner, of the obligation of the employer to maintain and
29 report those records. The employer shall also provide each
30 employee a written copy of the notification not later than 30 days
31 after the form of the notification is issued, or, if the employee is
32 hired after the issuance, at the time of the employee's hiring. In
33 adopting the regulation regarding the notification requirement, the
34 commissioner shall, to the greatest extent practicable, design the
35 notification in a manner which coordinates or consolidates the
36 notification with any other notifications required pursuant to State
37 wage, benefit and tax laws, as defined in section 1 of this act. The
38 notification shall also provide information on how an employee or
39 the employee's authorized representative, may contact, by
40 telephone, mail and e-mail, a representative of the commissioner to
41 provide information to, or file a complaint with, the representative
42 regarding possible violations of the requirements of this act or any
43 State wage, benefit and tax law, as defined in section 1 of this act,
44 or may obtain information about any actual violation, including any
45 audit undertaken pursuant to this act.

46 b. No employer shall discharge or in any other manner
47 discriminate against an employee because the employee has made
48 an inquiry or complaint to his employer, to the commissioner or to

1 his authorized representative regarding any possible violation by the
2 employer of the provisions of this act or any State wage, benefit and
3 tax laws, as defined in section 1 of this act, or because the employee
4 has caused to be instituted or is about to cause to be instituted any
5 proceeding under or related to this act or those laws, or because the
6 employee has testified or is about to testify in the proceeding.

7 c. Any employer who violates any provision of this section
8 shall be guilty of a disorderly persons offense and shall, upon
9 conviction, be fined not less than \$100 nor more than \$1,000. In
10 the case of a discharge or other discriminatory action in violation of
11 this section, the employer shall also be required to offer
12 reinstatement in employment to the discharged employee and to
13 correct any discriminatory action, and to pay to the employee all
14 reasonable legal costs of the action, all wages and benefits lost as a
15 result of the discharge or discriminatory action, plus punitive
16 damages equal to two times the lost wages and benefits, under
17 penalty of contempt proceedings for failure to comply with the
18 requirement.

19
20 5. This act shall take effect immediately.

21 22 23 STATEMENT

24
25 This bill provides that if the Commissioner of Labor and
26 Workforce Development determines that an employer has
27 knowingly failed for one or more of its employees to maintain and
28 report all records required by laws specified in the bill regarding
29 wages, benefits and taxes and has, in connection with that knowing
30 failure to maintain or report the records, failed to pay wages,
31 benefits, taxes or other contributions or assessments required by
32 those laws, the commissioner may, as an alternative to, or in
33 addition to, any other actions taken in the enforcement of those
34 laws, after affording the employer notice and an opportunity for a
35 hearing, issue a written determination directing any appropriate
36 agency to suspend any one or more licenses that are held by the
37 employer for a period of time determined by the commissioner
38 based on specified factors. The commissioner is required to
39 conduct a subsequent audit or inspection of the employer or any
40 successor firm of the employer not more than six months after the
41 date of the commissioner's written determination.

42 If the commissioner determines in the subsequent audit or
43 inspection that the employer or successor firm has continued to
44 knowingly fail to maintain or report the records required by law and
45 continued to knowingly fail to pay the required wages, benefits,
46 taxes or other contributions or assessments, the commissioner, after
47 providing notice and an opportunity for a hearing, is required to
48 issue a determination directing the appropriate agency to

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6

1 permanently revoke any licenses held by the employer or successor
2 firm.

3 The bill also requires employers to notify employees of its
4 provisions, prohibits employers from retaliating against employees
5 for making inquiries or complaints regarding possible violations of
6 the bill, and provides remedies and penalties for violations.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2773**

STATE OF NEW JERSEY

DATED: JUNE 15, 2009

The Senate Labor Committee reports favorably the Senate Committee Substitute for Senate Bill No. 2773.

This bill provides that if the Commissioner of Labor and Workforce Development determines that an employer has failed for one or more of its employees to maintain and report all records required by laws specified in the bill regarding wages, benefits and taxes and has, in connection with that failure to maintain or report the records, failed to pay wages, benefits, taxes or other contributions or assessments as required by those laws, the commissioner is required, as an alternative to, or in addition to, any other actions taken in the enforcement of those laws, to notify the employer of the determination and have an audit of the employer and any successor firm of the employer conducted not more than 12 months after the determination.

If, in that audit, the commissioner determines that the employer or any successor firm to the employer has continued in its failure to maintain or report records as required by those laws and continued in its failure to pay wages, benefits, taxes or other contributions or assessments as required by those laws, the commissioner may, after affording the employer notice and an opportunity for a hearing, issue a written determination directing any appropriate agency to suspend any one or more licenses that are held by the employer for a period of time determined by the commissioner based on specified factors. The commissioner is required to conduct a subsequent audit or inspection of the employer or any successor firm of the employer not more than 12 months after the date of the commissioner's written determination.

If the commissioner determines in the subsequent audit or inspection that the employer or successor firm has continued to fail to maintain or report the records required by law and continued to fail to pay the required wages, benefits, taxes or other contributions or assessments, the commissioner, after providing notice and an opportunity for a hearing, is required to issue a determination directing any appropriate agency to permanently revoke any licenses held by the employer or successor firm.

The bill also requires employers to notify employees of its provisions, prohibits employers from retaliating against employees for

making inquiries or complaints regarding possible violations of the bill, and provides remedies and penalties for failure to comply with those requirements regarding notice and retaliation.

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 2773

with Senate Floor Amendments
(Proposed by Senator SWEENEY)

ADOPTED: DECEMBER 10, 2009

These Senate amendments provide that in instances, in which an employee leasing company has entered into an employee leasing agreement with a client company, any written determination by the Commissioner of Labor and Workforce Development directing agencies to suspend or revoke an employer license pursuant to the bill for a failure or continued failure to keep records or make payments pursuant to State wage, benefit and tax laws, shall be for the suspension or revocation of the licenses of the client company and not to the licenses of the employee leasing company, if the commissioner determines that the failure or continued failure was caused by incomplete, inaccurate, misleading, or false information provided to the employee leasing company by the client company, except that the amendments are not intended to diminish or limit the authority or obligation of the commissioner to rescind the registration of an employee leasing company under the current law governing employee leasing companies.

The amendments also delay the effective date of the bill until the 180th day after enactment, to provide the time for the Commissioner of Labor and Workforce Development to take whatever anticipatory administrative action is needed to implement the bill.

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2773**

with Senate Floor Amendments
(Proposed by Senator SWEENEY)

ADOPTED: JANUARY 7, 2010

The purpose of these amendments is to emphasize the intent of the bill that the bill's requirement to conduct an initial audit is triggered only by the failure of an employer to maintain and report, for at least one employee, every record required by the laws specified in the bill. This is consistent with the bill's purpose to have its sanctions apply only against employers who gain unfair competitive advantage by employing workers "off the books," thus choosing to ignore record-keeping requirements and evade the payment of legally-required wages, benefits and taxes.

ASSEMBLY, No. 3919

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 11, 2009

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Salem, Cumberland and Gloucester)
Assemblyman GORDON M. JOHNSON
District 37 (Bergen)
Assemblyman PAUL D. MORIARTY
District 4 (Camden and Gloucester)

SYNOPSIS

Concerns suspension and revocation of employer licenses for repeated violations of wage, benefit and tax laws.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/22/2009)

1 AN ACT concerning administrative action for certain repeated
2 violations of laws regarding wages, benefits and taxes, and
3 supplementing Title 34 of the Revised Statutes.

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

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20 (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.;

21 (3) A statement of qualification or a statement of foreign
22 qualification pursuant to the "Uniform Partnership Act (1996),"
23 P.L.2000, c.161 (C.42:1A-1 et al.);

24 (4) A certificate of limited partnership or a certificate of
25 authority pursuant to the "Uniform Limited Partnership Law
26 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

27 (5) A certificate of formation or certified registration pursuant
28 to the "New Jersey Limited Liability Company Act," P.L.1993,
29 c.210 (C.42:2B-1 et seq.); and

30 (6) Any license, certificate, permit or registration pursuant to
31 R.S.48:16-1 et seq., R.S.48:16-13 et seq.; the "New Jersey
32 Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of
33 P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 et seq.);
34 section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of
35 P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor
36 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

37 "State wage, benefit and tax laws" means:

38 (1) P.L.1965, c.173 (C.34:11-4.1 et seq.);

39 (2) The "New Jersey Prevailing Wage Act," P.L.1963, c.150
40 (C.34:11-56.25 et seq.);

41 (3) The "New Jersey State Wage and Hour Law," P.L.1966,
42 c.113 (C.34:11-56a et seq.);

43 (4) The workers' compensation law, R.S.34:15-1 et seq.;

44 (5) The "unemployment compensation law," R.S.43:21-1 et seq.;

45 (6) The "Temporary Disability Benefits Law," P.L.1948, c.110
46 (C.43:21-25 et al.);

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

1 (8) The "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
2 seq.

3
4 2. a. If the commissioner determines that an employer has
5 knowingly failed, for one or more of its employees, to maintain and
6 report all records regarding wages, benefits and taxes which the
7 employer is required to maintain and report pursuant to State wage,
8 benefit and tax laws, as defined in section 1 of this act, and has, in
9 connection with that knowing failure to maintain or report the
10 records, knowingly failed to pay wages, benefits, taxes or other
11 contributions or assessments as required by those laws, the
12 commissioner, as an alternative to, or in addition to, any other
13 actions taken in the enforcement of those laws:

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

22 (a) The number of employees for which the employer failed to
23 maintain or report required records and pay required wages,
24 benefits, taxes or other contributions or assessments;

25 (b) The total amount of wages, benefits, taxes or other
26 contributions or assessments not paid by the employer;

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

28 (d) Whether the employer made good faith efforts to comply
29 with any applicable requirements;

30 (e) The duration of the violation;

31 (f) The role of the directors, officers or principals of the
32 employer in the violation;

33 (g) Any prior misconduct by the employer; and

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

35 (2) Shall conduct a subsequent audit or inspection of the
36 employer or any successor firm of the employer not more than six
37 months after the date of the commissioner's written determination.

38 b. If, in the subsequent audit or inspection conducted pursuant
39 to subsection a. of this section, the commissioner determines that
40 the employer or successor firm has continued to knowingly fail to
41 maintain or report records as required pursuant to State wage,
42 benefit and tax laws, as defined in section 1 of this act, and
43 continued to knowingly fail to pay wages, benefits, taxes or other
44 contributions or assessments as required by those laws, the
45 commissioner, after affording the employer or successor firm notice
46 and an opportunity for a hearing in accordance with the provisions
47 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
48 1 et seq.), shall issue a written determination directing any

1 appropriate agency to permanently revoke any one or more licenses
2 that are held by the employer or any successor firm to the employer
3 and that are necessary to operate the employer or successor firm.

4 c. Upon receipt of any written determination of the
5 commissioner directing an agency to suspend or revoke a license
6 pursuant to this section, and notwithstanding any other law, the
7 agency shall immediately suspend or revoke the license.

8

9 3. A rebuttable presumption that an employer has established a
10 successor firm shall arise if the two parties share two or more of the
11 following capacities or characteristics:

- 12 a. Performing similar work within the same geographical area;
- 13 b. Occupying the same premises;
- 14 c. Having the same telephone or fax number;
- 15 d. Having the same e-mail address or Internet website;
- 16 e. Employing substantially the same work force, administrative
17 employees, or both;
- 18 f. Utilizing the same tools, equipment or facilities;
- 19 g. Employing or engaging the services of any person or persons
20 involved in the direction or control of the other; or
- 21 h. Listing substantially the same work experience.

22

23 4. a. Each employer which is required to maintain and report
24 records regarding wages, benefits, taxes and other contributions and
25 assessments pursuant to State wage, benefit and tax laws, as defined
26 in section 1 of this act, shall conspicuously post notification, in a
27 place or places accessible to all employees in each of the employer's
28 workplaces, in a form issued by regulation adopted by the
29 commissioner, of the obligation of the employer to maintain and
30 report those records. The employer shall also provide each
31 employee a written copy of the notification not later than 30 days
32 after the form of the notification is issued, or, if the employee is
33 hired after the issuance, at the time of the employee's hiring. In
34 adopting the regulation regarding the notification requirement, the
35 commissioner shall, to the greatest extent practicable, design the
36 notification in a manner which coordinates or consolidates the
37 notification with any other notifications required pursuant to State
38 wage, benefit and tax laws, as defined in section 1 of this act. The
39 notification shall also provide information on how an employee or
40 the employee's authorized representative, may contact, by
41 telephone, mail and e-mail, a representative of the commissioner to
42 provide information to, or file a complaint with, the representative
43 regarding possible violations of the requirements of this act or any
44 State wage, benefit and tax law, as defined in section 1 of this act,
45 or may obtain information about any actual violation, including any
46 audit undertaken pursuant to this act.

47 b. No employer shall discharge or in any other manner
48 discriminate against an employee because the employee has made

1 an inquiry or complaint to his employer, to the commissioner or to
2 his authorized representative regarding any possible violation by the
3 employer of the provisions of this act or any State wage, benefit and
4 tax laws, as defined in section 1 of this act, or because the employee
5 has caused to be instituted or is about to cause to be instituted any
6 proceeding under or related to this act or those laws, or because the
7 employee has testified or is about to testify in the proceeding.

8 c. Any employer who violates any provision of this section
9 shall be guilty of a disorderly persons offense and shall, upon
10 conviction, be fined not less than \$100 nor more than \$1,000. In
11 the case of a discharge or other discriminatory action in violation of
12 this section, the employer shall also be required to offer
13 reinstatement in employment to the discharged employee and to
14 correct any discriminatory action, and to pay to the employee all
15 reasonable legal costs of the action, all wages and benefits lost as a
16 result of the discharge or discriminatory action, plus punitive
17 damages equal to two times the lost wages and benefits, under
18 penalty of contempt proceedings for failure to comply with the
19 requirement.

20

21 5. This act shall take effect immediately.

22

23

24

STATEMENT

25

26 This bill provides that if the Commissioner of Labor and
27 Workforce Development determines that an employer has
28 knowingly failed for one or more of its employees to maintain and
29 report all records required by laws specified in the bill regarding
30 wages, benefits and taxes and has, in connection with that knowing
31 failure to maintain or report the records, failed to pay wages,
32 benefits, taxes or other contributions or assessments required by
33 those laws, the commissioner may, as an alternative to, or in
34 addition to, any other actions taken in the enforcement of those
35 laws, after affording the employer notice and an opportunity for a
36 hearing, issue a written determination directing any appropriate
37 agency to suspend any one or more licenses that are held by the
38 employer for a period of time determined by the commissioner
39 based on specified factors. The commissioner is required to
40 conduct a subsequent audit or inspection of the employer or any
41 successor firm of the employer not more than six months after the
42 date of the commissioner's written determination.

43 If the commissioner determines in the subsequent audit or
44 inspection that the employer or successor firm has continued to
45 knowingly fail to maintain or report the records required by law and
46 continued to knowingly fail to pay the required wages, benefits,
47 taxes or other contributions or assessments, the commissioner, after
48 providing notice and an opportunity for a hearing, is required to

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1 issue a determination directing the appropriate agency to
2 permanently revoke any licenses held by the employer or successor
3 firm.

4 The bill also requires employers to notify employees of its
5 provisions, prohibits employers from retaliating against employees
6 for making inquiries or complaints regarding possible violations of
7 the bill, and provides remedies and penalties for violations.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3919

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Labor Committee reports favorably Assembly Committee Substitute for Assembly Bill No. 3919.

The purpose of this bill is to impose strong sanctions against employers who gain unfair competitive advantage by employing workers “off the books,” thus choosing to ignore record-keeping requirements and evade the payment of legally-required wages, benefits and taxes. The bill provides that if the Commissioner of Labor and Workforce Development determines that an employer has failed for one or more of its employees to maintain and report all records required by laws specified in the bill regarding wages, benefits and taxes and has, in connection with that failure to maintain or report the records, failed to pay wages, benefits, taxes or other contributions or assessments as required by those laws, the commissioner is required, as an alternative to, or in addition to, any other actions taken in the enforcement of those laws, to notify the employer of the determination and have an audit of the employer and any successor firm of the employer conducted not more than 12 months after the determination.

If, in that audit, the commissioner determines that the employer or any successor firm to the employer has continued in its failure to maintain or report records as required by those laws and continued in its failure to pay wages, benefits, taxes or other contributions or assessments as required by those laws, the commissioner may, after affording the employer notice and an opportunity for a hearing, issue a written determination directing any appropriate agency to suspend any one or more licenses that are held by the employer for a period of time determined by the commissioner based on specified factors. The commissioner is required to conduct a subsequent audit or inspection of the employer or any successor firm of the employer not more than 12 months after the date of the commissioner’s written determination.

If the commissioner determines in the subsequent audit or inspection that the employer or successor firm has continued to fail to maintain or report the records required by law and continued to fail to pay the required wages, benefits, taxes or other contributions or assessments, the commissioner, after providing notice and an

opportunity for a hearing, is required to issue a determination directing any appropriate agency to permanently revoke any licenses held by the employer or successor firm.

The bill also requires employers to notify employees of its provisions, prohibits employers from retaliating against employees for making inquiries or complaints regarding possible violations of the bill, and provides remedies and penalties for failure to comply with those requirements regarding notice and retaliation.

The bill provides that in the case of an employee leasing company with an employee leasing agreement with a client company, any determination by the commissioner to suspend or revoke an employer license pursuant to the bill shall be for the suspension or revocation of the licenses of the client company not to the licenses of the employee leasing company, if the commissioner finds the failure was caused by incomplete, inaccurate, misleading, or false information provided by the client company, except that the bill is not intended to diminish or limit the authority or obligation of the commissioner to rescind the registration of an employee leasing company under the current law governing employee leasing companies.

It is the intent of the sponsor that the bill's requirement to conduct an audit triggered by the initial determination shall only be triggered by an employer that fails to maintain and report every record required by the laws specified in the bill for at least one employee. This is intended to capture employees who are 'paid off the books.'

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3919

with Assembly Floor Amendments
(Proposed by Assemblyman BURZICHELLI)

ADOPTED: JANUARY 7, 2010

The purpose of these amendments is to emphasize the intent of the bill that the bill's requirement to conduct an initial audit is triggered only by the failure of an employer to maintain and report, for at least one employee, every record required by the laws specified in the bill. This is consistent with the bill's purpose to have its sanctions apply only against employers who gain unfair competitive advantage by employing workers "off the books," thus choosing to ignore record-keeping requirements and evade the payment of legally-required wages, benefits and taxes.