

[First Reprint]

**ASSEMBLY, No. 3581**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

INTRODUCED DECEMBER 6, 2012

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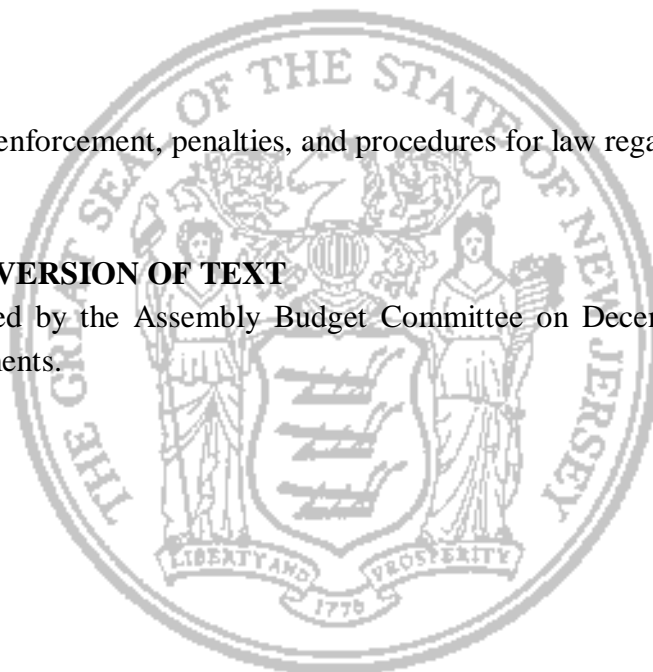
**Assemblywomen Mosquera and Lampitt**

**SYNOPSIS**

Concerns enforcement, penalties, and procedures for law regarding failure to pay wages.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Budget Committee on December 13, 2012, with amendments.



**(Sponsorship Updated As Of: 12/18/2012)**

1 AN ACT concerning enforcement, penalties, and procedures for law  
2 regarding failure to pay wages, supplementing chapter 11 of Title  
3 34 of the Revised Statutes, and amending P.L.1990, c.90.

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

7  
8 1. (New section) As used in sections 2 through 4 of 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 "Community-based organization" means a public, or nonprofit  
15 private, organization funded with public or private funds, or both,  
16 that provides services to day laborers, migrant laborers, temporary  
17 laborers, or any other type of employee.

18 "Department" means the Department of Labor and Workforce  
19 Development.

20 "Legal services organization" means a public, or nonprofit  
21 private, organization funded with public or private funds, or both,  
22 that provides counseling or advice related to wage protection laws,  
23 preparation of legal documents, or representation of any person  
24 before a court or administrative agency.

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

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

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

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

35 (4) A certificate of limited partnership or a certificate of  
36 authority pursuant to the "Uniform Limited Partnership Law  
37 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.);

38 (5) A certificate of formation or certified registration pursuant  
39 to the "New Jersey Limited Liability Company Act," P.L.1993,  
40 c.210 (C.42:2B-1 et seq.); or the "Revised Uniform Limited  
41 Liability Company Act," P.L.2012, c.50 (C.42:2C-1 et seq.); and

42 (6) Any license, certificate, permit or registration pursuant to  
43 R.S.48:16-1 et seq.; R.S.48:16-13 et seq.; the "New Jersey  
44 Alcoholic Beverage Control Act," R.S.33:1-1 et seq.; section 4 of  
45 P.L.2001, c.260 (C.34:8-70); P.L.1971, c.192 (C.34:8A-7 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:

<sup>1</sup>Assembly ABU committee amendments adopted December 13, 2012.

1 section 12 of P.L.1975, c.217 (C.52:27D-130); section 14 of  
2 P.L.1981, c.1 (C.56:8-1.1); or "The Public Works Contractor  
3 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).  
4

5 2. (New section) a. Upon the conviction of an employer under  
6 subsection a. of section 10 of P.L.1999, c.90 (C.2C:40A-2) the  
7 Attorney General, or the Attorney General's designee, shall notify  
8 the commissioner of the employer's conviction. Upon notification  
9 by the Attorney General, or the Attorney General's designee, the  
10 commissioner:

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

20 (a) The number of employees for which the employer or  
21 successor firm failed to pay wages, compensation or benefits;

22 (b) The total amount of wages, compensation or benefits not  
23 paid by the employer or successor firm;

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

25 (d) The duration of the violation;

26 (e) Whether the employer or successor firm was found to have  
27 retaliated against an employee for filing a complaint under section  
28 10 of P.L.1999, c.90 (C.2C:40A-2);

29 (f) Any prior misconduct by the employer or successor firm;  
30 and

31 (g) Any other factors the commissioner considers relevant; and

32 (2) Shall conduct an audit or inspection of the employer or  
33 successor firm not more than 12 months after the date of the  
34 commissioner's written determination.

35 b. If, in the audit or inspection conducted pursuant to  
36 subsection a. of this section, the commissioner determines that the  
37 employer or successor firm has continued in its failure to pay  
38 wages, compensation or benefits, or if the commissioner is notified  
39 of a subsequent violation of subsection a. of section 10 of P.L.1999,  
40 c.90 (C.2C:40A-2) by the employer, 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 each appropriate  
45 agency to permanently revoke any license that is issued by the  
46 agency to the employer or any successor firm to the employer.

47 c. Upon receipt of any written determination of the  
48 commissioner directing an agency to suspend or revoke a license

1 pursuant to this section, and notwithstanding any other law, the  
2 agency shall immediately suspend or revoke the license.

3

4 3. (New section) The department, for the purpose of supporting  
5 the enforcement of section 10 of P.L.1999, c.90 (C.2C:40A-2),  
6 shall:

7 a. Contract with community-based organizations and legal  
8 services organizations to disseminate information to day laborers,  
9 migrant laborers, temporary laborers, or any other type of employee  
10 concerning the protections afforded by section 10 of P.L.1999, c.90  
11 (C.2C:40A-2), and the process by which an individual may file a  
12 complaint under that law.

13 b. Contract with community-based organizations and legal  
14 services organizations to investigate, prepare, and if necessary,  
15 represent employees that file complaints under section 10 of  
16 P.L.1999, c.90 (C.2C:40A-2).

17 c. Require that community-based and legal services  
18 organizations contracted by the department make all services  
19 accessible to persons with limited English proficiency.

20 d. Determine the median hourly wage upon enactment of  
21 P.L. , c. (C. ) (pending before the Legislature as this bill), and on  
22 July 1 of each year thereafter, for purposes of subsection e. of  
23 section 10 of P.L.1999, c.90 (C.2C:40A-2).

24

25 4. (New section) The commissioner, in consultation with the  
26 Administrative Director of the Courts and the Attorney General,  
27 shall submit to the Legislature twice each year a report evaluating  
28 the effectiveness of P.L. , c. (C. ) (pending before the Legislature  
29 as this bill). The report shall include, but not be limited to:

30 a. The number and nature of complaints, prosecutions,  
31 dispositions, penalties, and business license suspensions and  
32 revocations.

33 b. An enumeration and description of all community-based and  
34 legal services organizations contracted by the department to support  
35 the enforcement, as required by section 3 of this act.

36 c. Recommendations for strengthening the enforcement of this  
37 act, and any other recommendations regarding the effectiveness of  
38 this act.

39

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

42 10. Violation of contract to pay employees.

43 a. An employer or agent of an employer who has agreed with  
44 an employee or with a bargaining agent for employees to pay  
45 wages, compensation or benefits to or for the benefit of employees  
46 commits a disorderly persons offense if the employer or an agent of  
47 the employer:

- 1       (1) 'knowingly' fails to pay wages when due as agreed or as  
2 required by law; or
- 3       (2) 'knowingly' fails to pay compensation or benefits as agreed  
4 or as required by law within 30 days after due.
- 5       b. If a corporate employer violates subsection a., any officer or  
6 employee of the corporation who is responsible for the violation  
7 commits a disorderly persons offense.
- 8       c. An employee may file a citizen complaint alleging a  
9 violation of this section directly with a municipal court.
- 10      d. Upon the presentation of sufficient evidence of a violation of  
11 this section, the fact finder may infer that an employer who fails to  
12 present employee records, as required pursuant to State wage,  
13 benefit and tax laws, employed the complainant for the period of  
14 time, and owes the amount of wages, as alleged in the citizen  
15 complaint<sup>1</sup>, unless the employer provides a reasonable excuse for  
16 the failure to present employee records<sup>1</sup>.
- 17      e. For the purposes of this section, there shall be a rebuttable  
18 presumption that an individual earning less than two thirds of the  
19 median hourly wage, as determined by the Department of Labor and  
20 Workforce Development, is an employee and not an independent  
21 contractor. This rebuttable presumption may not be altered by any  
22 contract, nor does this rebuttable presumption alter the existing  
23 criteria for determining whether an individual is an independent  
24 contractor pursuant to any applicable State wage, benefit and tax  
25 laws.
- 26      f. A citizen complaint alleging a violation of this section shall  
27 be filed where the offense occurred, which for purposes of this  
28 section may be the place where the employee was hired or the place  
29 where the relevant work was performed by the employee.
- 30      g. Jurisdiction for prosecution under this section shall be the  
31 place where the offense occurred, which for purposes of this section  
32 may be the place where the employee was hired or the place where  
33 the relevant work was performed by the employee.
- 34      h. An employer found to have committed a violation of this  
35 section shall pay the employee the wages owed plus liquidated  
36 damages equal to 100 percent of the wages owed.
- 37      i. In addition to damages provided in this or any other law, an  
38 employer found guilty of violating the provisions of this section  
39 shall be fined \$500 plus a 20 percent penalty of the wages owed for  
40 a first offense, and \$1,000 plus a 20 percent penalty of the wages  
41 owed for subsequent offenses. Any sum collected as a fine or  
42 penalty pursuant to this subsection shall be applied toward  
43 enforcement and administration costs of the Division of Wage and  
44 Hour Compliance in the Department of Labor and Workforce  
45 Development.
- 46      j. An employer who is found to have retaliated against an  
47 employee for filing a complaint under this section commits a

1 disorderly persons offense and shall be liable to the employee for  
2 damages.

3 k. For purposes of this section:

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

9 “Employee” means any person suffered or permitted to work by  
10 an employer, except that independent contractors and  
11 subcontractors shall not be considered employees.

12 “Employer” means any individual, partnership, association, joint  
13 stock company, trust, corporation, the administrator or executor of  
14 the estate of a deceased individual, or the receiver, trustee, or  
15 successor of any of the same, employing any person in this State.  
16 For the purposes of this section the officers of a corporation and any  
17 agents having the management of such corporation shall be deemed  
18 to be the employers of the employees of the corporation.

19 “Median hourly wage” means the hourly wage as determined by  
20 the Department of Labor and Workforce Development pursuant to  
21 subsection d. of section 3 of P.L. , c. (C. ) (pending before the  
22 Legislature as this bill).

23 “State wage, benefit and tax laws” means:

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

25 (2) The “New Jersey Prevailing Wage Act,” P.L.1963, c.150  
26 (C.34:11-56.25 et seq.);

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

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

30 (5) The “unemployment compensation law,” R.S.43:21-1 et  
31 seq.;

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

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

35 (8) The “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et  
36 seq.

37 “Wages” means the direct monetary compensation for labor or  
38 services rendered by an employee, where the amount is determined  
39 on a time, task, piece, or commission basis, including overtime pay  
40 and pay for sick, vacation, or other paid leave, and excluding any  
41 form of supplementary incentives and bonuses which are calculated  
42 independently of regular wages and paid in addition thereto.

43 “When due” is the time agreed upon by the employer and  
44 employee but in any case not greater than 16 days of completion of  
45 the work as provided for under section 2 of P.L.1965, c.173

- 1 (C.34:11-4.2) and in accordance with a bi-monthly payment
- 2 schedule.
- 3 (cf: P.L.1999, c.90, s.10)
- 4
- 5 6. This act shall take effect immediately.