

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 862**

**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

ADOPTED JUNE 20, 2016

**Sponsored by:**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Assemblywoman ELIZABETH MAHER MUOIO**

**District 15 (Hunterdon and Mercer)**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Burlington and Camden)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Judiciary Committee.



**(Sponsorship Updated As Of: 11/22/2016)**

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

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

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

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

24 c. An employee may file a citizen complaint alleging a  
25 violation of this section directly with a municipal court.

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

33 e. For the purposes of this section, there shall be a rebuttable  
34 presumption that an individual earning less than two thirds of the  
35 median hourly wage is an employee and not an independent  
36 contractor. This rebuttable presumption may not be altered by any  
37 contract, nor does this rebuttable presumption alter existing criteria  
38 for determining whether an individual is an independent contractor  
39 pursuant to any other State wage, benefit and tax laws.

40 f. A citizen complaint alleging a violation of this section shall  
41 be filed where the offense occurred, which for purposes of this  
42 section may be the place where the employee was hired or the place  
43 where the relevant work was performed by the employee.

44 g. Jurisdiction for prosecution under this section shall be the  
45 place where the offense occurred, which for purposes of this section

**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 may be the place where the employee was hired or the place where  
2 the relevant work was performed by the employee.

3 h. An employer found to have committed a violation of this  
4 section shall pay the employee the wages owed plus liquidated  
5 damages equal to 200 percent of the wages owed, and reasonable  
6 costs of the action to the employee.

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

16 j. An employer who is found to have retaliated against an  
17 employee for filing a complaint under this section commits a  
18 disorderly persons offense and shall be liable to the employee for  
19 damages equal to 200 percent of the wages lost as a result of the  
20 retaliation, and reasonable costs of the action to the employee and,  
21 if the employee was discharged, be required to offer reinstatement.

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

27 l. For purposes of this section:

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

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

36 “Employer” means any individual, partnership, association, joint  
37 stock company, trust, corporation, the administrator or executor of  
38 the estate of a deceased individual, or the receiver, trustee, or  
39 successor of any of the same, employing any person in this State.  
40 For the purposes of this section the officers of a corporation and any  
41 agents having the management of that corporation shall be deemed  
42 to be the employers of the employees of the corporation.

43 “Median hourly wage” means the median hourly wage as  
44 determined by the Department of Labor and Workforce  
45 Development pursuant to subsection c. of section 11 of P.L. \_\_\_\_\_,  
46 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill).

47 “State wage and hour laws” means article 1 of chapter 11 of Title  
48 34 of the Revised Statutes and all acts supplementing that article

1 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that  
2 act (C.34:11-56a et al.), and article 3 of chapter 11 of Title 34 of the  
3 Revised Statutes (R.S.34:11-57 et seq.);

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

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

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

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

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

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

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

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

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

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

28  
29 2. Section 2 of P.L.2009, c.194 (C.34:1A-1.12) is amended to  
30 read as follows:

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

47 b. If, in an audit conducted pursuant to subsection a. of this  
48 section, the commissioner determines that the employer or any

1 successor firm to the employer has continued in its failure to  
2 maintain or report records as required by those laws and continued  
3 in its failure to pay wages, benefits, taxes or other contributions or  
4 assessments as required by those laws, or if the commissioner is  
5 notified pursuant to subsection g. of this section of a subsequent  
6 conviction of the employer under subsection a. of section 10 of  
7 P.L.1999, c.90 (C.2C:40A-2), the commissioner:

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

17 (a) The number of employees for which the employer or  
18 successor firm failed to maintain or report required records and pay  
19 required wages, benefits, taxes or other contributions or  
20 assessments;

21 (b) The total amount of wages, benefits, taxes or other  
22 contributions or assessments not paid by the employer or successor  
23 firm;

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

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

27 (e) The duration of the violation;

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

30 (g) Any prior misconduct by the employer or successor firm;  
31 and

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

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

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

1 seq.), shall issue a written determination directing any appropriate  
2 agency to permanently revoke any one or more licenses that are  
3 held by the employer or any successor firm to the employer and that  
4 are necessary to operate the employer or successor firm.

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

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

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

35 g. Upon the conviction of an employer under subsection a. of  
36 section 10 of P.L.1999, c.90 (C.2C:40A-2) the Attorney General,  
37 the Attorney General's designee, or the municipal or other court  
38 shall notify the commissioner of the employer's conviction.

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

40

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

43 10. a. Any employer who knowingly and willfully violates any  
44 provision of P.L.1965, c.173 (34:11-4.1 et seq.), or who discharges,  
45 in any other manner discriminates against, or takes any other  
46 adverse action against an employee because the employee has made  
47 a complaint to that employee's employer, to the commissioner, or to  
48 that employee's authorized representative, that the employer has not

1 paid the employee the full amount of wages agreed upon or required  
2 by, and in the manner required by, the provisions of article 1 of  
3 chapter 11 of Title 34 of the Revised Statutes and all acts  
4 supplementing that article (R.S.34:11-2 et al.), or because the  
5 employee has caused to be instituted or is about to cause to be  
6 instituted any proceeding under or related to that article or those  
7 acts, or because that employee has testified or is about to testify in  
8 any proceeding under or relating to that article or those acts, or  
9 because the employee has informed any person about rights under  
10 State laws regarding wages and hours worked, shall be guilty of a  
11 disorderly persons offense and, upon conviction for a violation,  
12 shall be punished by a fine of not less than \$100 nor more than  
13 \$1,000. Each day during which any violation of [this act]  
14 P.L.1965, c.173 (C.34:11-4.1 et seq.) continues shall constitute a  
15 separate and distinct offense. In the case of a discharge, act of  
16 discrimination, or other adverse action against the employee which  
17 is in violation of this subsection, the employer shall be required to  
18 offer reinstatement in employment to the discharged employee and  
19 to correct the discriminatory action, and also to pay to the  
20 employee, in full, all wages lost as a result of that discharge or  
21 discriminatory action, plus any reasonable cost of the action, and  
22 liquidated damages equal to 200 percent of the wages due, under  
23 penalty of contempt proceedings. Taking an adverse action against  
24 an employee within ninety days of the employee engaging in the  
25 foregoing activities shall raise a presumption that the action was  
26 retaliation, which may be rebutted only by clear and convincing  
27 evidence that the action was taken for other, permissible, reasons.  
28 An employee complaint or other communication need not make  
29 explicit reference to any section or provision of any State law  
30 regarding wages and hours worked to trigger the protections of this  
31 section.

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

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

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



1 article 1 of chapter 11 of Title 34 of the Revised Statutes and all  
2 acts supplementing that article (R.S.34:11-2 et al.), the  
3 commissioner may take an assignment of the wage claim in trust for  
4 the assigning employee and may bring any legal action necessary to  
5 collect the claim, and the employer shall be required to pay to the  
6 employee the unpaid wages and liquidated damages equal to 200  
7 percent of the amount of the unpaid wages and pay to the  
8 commissioner the costs and reasonable attorney's fees as determined  
9 by the court.

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

11

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

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

44 b. As an alternative to or in addition to any other sanctions  
45 provided by law for violations of P.L.1966, c.113 (C.34:11-56a et  
46 seq.), when the Commissioner of Labor and Workforce  
47 Development finds that an employer has violated that act, or taken  
48 any adverse action against the employee in violation of subsection

1 a. of this section, the commissioner is authorized to assess and  
2 collect administrative penalties, up to a maximum of \$250 for a first  
3 violation and up to a maximum of \$500 for each subsequent  
4 violation, specified in a schedule of penalties to be promulgated as a  
5 rule or regulation by the commissioner in accordance with the  
6 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
7 seq.). When determining the amount of the penalty imposed because  
8 of a violation, the commissioner shall consider factors which  
9 include the history of previous violations by the employer, the  
10 seriousness of the violation, the good faith of the employer and the  
11 size of the employer's business. No administrative penalty shall be  
12 levied pursuant to this section unless the Commissioner of Labor  
13 and Workforce Development provides the alleged violator with  
14 notification of the violation and of the amount of the penalty by  
15 certified mail and an opportunity to request a hearing before the  
16 commissioner or his designee within 15 days following the receipt  
17 of the notice. If a hearing is requested, the commissioner shall  
18 issue a final order upon such hearing and a finding that a violation  
19 has occurred. If no hearing is requested, the notice shall become a  
20 final order upon expiration of the 15-day period. Payment of the  
21 penalty is due when a final order is issued or when the notice  
22 becomes a final order. Any penalty imposed pursuant to this  
23 section may be recovered with costs in a summary proceeding  
24 commenced by the commissioner pursuant to ["the penalty  
25 enforcement law" (N.J.S.2A:58-1 et seq.)] the "Penalty  
26 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
27 Any sum collected as a fine or penalty pursuant to this section shall  
28 be applied toward enforcement and administration costs of the  
29 Division of Workplace Standards in the Department of Labor and  
30 Workforce Development.  
31 (cf: P.L.1991, c.205, s.22)  
32

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

35 26. If any employee is paid by an employer less than the  
36 minimum fair wage to which [such] the employee is entitled under  
37 the provisions of [this act] P.L.1966, c.113 (C.34:11-56a et seq.) or  
38 by virtue of a minimum fair wage order [such], the employee may  
39 recover in a civil action the full amount of [such] that minimum  
40 wage less any amount actually paid to him or her by the employer  
41 [together with] and an additional amount equal to 200 percent of  
42 the amount of the unpaid minimum wages as liquidated damages,  
43 plus costs and [such] reasonable attorney's fees as [may be  
44 allowed] determined by the court, [and any] except that an  
45 agreement of the employee to accept payment of the unpaid wages  
46 or compensation supervised by the commissioner pursuant to  
47 section 24 of P.L.1966, c.113 (C.34:11-56a23) or R.S.34:11-58

1 shall, upon payment in full, constitute a waiver of any right of the  
2 employee to receive liquidated damages pursuant to this section.  
3 Any agreement between [such] the employee and the employer to  
4 work for less than [such] the minimum fair wage shall be no  
5 defense to the action. An employee shall be entitled to maintain  
6 [such] the action for and on behalf of himself or other employees  
7 similarly situated, and [such] the employee and employees may  
8 designate an agent or representative to maintain [such] the action  
9 for and on behalf of all employees similarly situated. The employee  
10 may bring the action to recover unpaid minimum wages pursuant to  
11 this section in the Superior Court, and may bring the action in the  
12 Division of Small Claims of the Superior Court, Law Division,  
13 Special Civil Part if the sum of the amount of unpaid minimum  
14 wages and the amount of liquidated damages does not exceed the  
15 jurisdictional limits of the Division of Small Claims.

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

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

27

28 6. R.S.34:11-57 is amended to read as follows:

29 34:11-57. As used in this article:

30 "Commissioner" means the Commissioner of Labor and  
31 [Industry] Workforce Development or any person or persons in the  
32 department designated in writing by him for the purposes of this  
33 article.

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

38 "Department" means the Department of Labor and Workforce  
39 Development.

40 "Employee" means any natural person who works for another for  
41 hire.

42 "Employer" means any person, partnership, firm or corporation  
43 employing another for hire, or any employee leasing company that  
44 enters into an employee leasing agreement with, and assigns  
45 employees to, an employer pursuant to P.L.2001, c.260 (C.34:8-67  
46 et seq.).

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

6       “State wage and hour laws” means article 1 of chapter 11 of Title  
7 34 of the Revised Statutes and all acts supplementing that article  
8 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that  
9 act (C.34:11-56a et al.), and article 3 of chapter 11 of Title 34 of the  
10 Revised Statutes (R.S.34:11-57 et seq.)

11       “Wages” means any moneys due an employee from the employer  
12 whether payable by the hour, day, week, semimonthly, monthly or  
13 yearly and shall include commissions, bonus, piecework  
14 compensation and any other benefits arising out of an employment  
15 contract.

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

17  
18       7. R.S.34:11-58 is amended to read as follows:

19       34:11-58. a. An employee may file a claim for wages against an  
20 employer under this section or any of the other State wage and  
21 hours laws for wages owed related to work performed up to six  
22 years prior to the date the claim for wages is filed.

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

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

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

34       Such judgment shall be entered in the same manner and have the  
35 same effect and be subject to the same proceedings as are  
36 judgments rendered in suits duly heard and determined by courts of  
37 competent jurisdiction.

38       d. Upon an investigation of a wage claim initiated pursuant to  
39 this section or any of the other State wage and hours laws, if an  
40 employer fails to provide sufficient employee records, as required  
41 to be kept under any State wage and hour laws, there shall be a  
42 rebuttable presumption that the employee worked for the employer  
43 for the period of time and for the amount of wages as alleged in the  
44 wage claim.

45       e. The commissioner is authorized to supervise the payment of  
46 amounts, including liquidated damages, due to employees under an  
47 award made pursuant to this section, and the employer may be  
48 required to make these payments to the commissioner to be held in

1 a special account in trust for the employees, and paid on order of  
2 the commissioner directly to the employee or employees affected.  
3 The employer shall also pay the commissioner an administrative fee  
4 equal to not less than 10percent or more than 25percent of any  
5 payment made to the commissioner pursuant to this section. The  
6 amount of the administrative fee shall be specified in a schedule of  
7 fees to be promulgated by rule or regulation of the commissioner in  
8 accordance with the "Administrative Procedure Act," P.L.1968,  
9 c.410 (C.52:14B-1 et seq.). The fee shall be applied to enforcement  
10 and administration costs of the Division of Workplace Standards in  
11 the Department of Labor and Workforce Development.

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

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

20 (2) notify the Division of Taxation in the Department of the  
21 Treasury of the decision and recommend that the division conduct  
22 an audit of the employer to ensure the proper withholding and  
23 payment of payroll and other taxes by the employer.

24 g. For the purposes of this section and any of the other State  
25 wage and hours laws, there shall be a rebuttable presumption that an  
26 individual earning less than two thirds of the median hourly wage,  
27 as determined by the Department of Labor and Workforce  
28 Development pursuant to subsection c. of section 11 of P.L. \_\_\_\_\_,  
29 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill), is an  
30 employee and not an independent contractor. This rebuttable  
31 presumption may not be altered by any contract, nor does this  
32 rebuttable presumption alter the existing criteria for determining  
33 whether an individual is an independent contractor pursuant to any  
34 other State wage, benefit and tax laws as defined in section 10 of  
35 P.L.1999, c.90 (C.2C:40A-2).

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

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

43  
44 8. (New section) a. If an employer fails to comply with a final  
45 determination of the commissioner or a judgment of a court,  
46 including a small claims court, made under the provisions of State  
47 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40-2),  
48 to pay an employee any wages owed or damages awarded within ten

1 days of the time that the determination or judgement requires the  
2 payment, the commissioner may do either or both of the following:

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

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

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

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

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

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

45  
46 9. (New section) a. A client employer and a labor contractor  
47 providing workers to the client employer shall be subject to joint  
48 and several liability and shall share civil legal responsibility for any

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

13 b. This section shall not be interpreted to impose individual  
14 liability on a homeowner for labor or services received at the home  
15 or the owner of a home-based business for labor or services  
16 received at the home.

17 c. As used in this section:

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

22 “Labor contractor” means any individual or entity that supplies,  
23 either with or without a contract, directly or indirectly, a client  
24 employer with workers to perform labor or services within the  
25 client employer’s usual course of business, except that “labor  
26 contractor” does not include a bona fide labor organization or  
27 apprenticeship program, or a hiring hall operated pursuant to a  
28 collective bargaining agreement.

29 “Usual course of business” means the regular and customary  
30 work of a business, performed within or upon the premises or  
31 worksite of the client employer, or any other place of business of  
32 the client employer for which services or labor are performed.

33

34 10. (New section) Each employer shall provide each current  
35 employee and each newly hired employee of the employer, a written  
36 copy of the statement produced by the department pursuant to  
37 subsection d. of section 11 of P.L. , c. (C. ) (pending before  
38 the Legislature as this bill) of the employee’s rights under the  
39 provisions of State wage and hour laws and the provisions of  
40 section 10 of P.L.1999, c.90 (C.2C:40A-2), with an explanation of  
41 how to file a claim or take an action pursuant to those laws.

42

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

46 a. contract with community-based organizations and legal  
47 services organizations to disseminate information to day laborers,  
48 migrant laborers, temporary laborers, or any other type of employee

1 concerning the protections afforded by State wage and hour laws  
2 and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by  
3 which an individual may take actions under those laws;

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

9 c. determine the median hourly wage upon enactment of P.L. ,  
10 c. (C. ) (pending before the Legislature as this bill), and on July  
11 1 of each year thereafter, for purposes of subsection e. of section 10  
12 of P.L.1999, c.90 (C.2C:40A-2) and subsection k. of R.S.34:11-58;  
13 and

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

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

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

41  
42 12. (New section) a. The commissioner, in consultation with  
43 the Administrative Director of the Courts and the Attorney General,  
44 shall compile and prominently place on a website, maintained by  
45 the department and available to the public, an annual report  
46 evaluating the effectiveness and efficiency of the enforcement and  
47 administration of wage claims and wage collections. The report  
48 shall include, but not be limited to:



1 (1) the number of complaints, investigations, prosecutions,  
2 dispositions, and business license suspensions and revocations, the  
3 number and amount of penalties, the amount of wages recovered,  
4 and the number of workers effected.

5 (2) an enumeration and description of all community-based and  
6 legal services organizations contracted by the department to support  
7 the enforcement.

8 (3) recommendations for strengthening the implementation and  
9 enforcement of P.L. , c. (C. ) (pending before the  
10 Legislature as this bill).

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

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

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

24 (3) The number of affected employees, and the amount of wages  
25 found owed; and

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

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

31

32 13. This act shall take effect immediately.