

ASSEMBLY, No. 5072

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 26, 2017

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)

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblyman Benson

SYNOPSIS

Concerns law regarding failure to pay wages.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/8/2017)

A5072 QUIJANO, MUOIO

2

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

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

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

11 10. Violation of contract to pay employees.

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

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

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

21 j. For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (e) The duration of the violation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5

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

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

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

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

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

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

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

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

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

21

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

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

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

41

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 b. This section shall not be interpreted as:

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

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

30 c. As used in this section:

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

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

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

46

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 STATEMENT

43
44 This bill assists workers aggrieved by certain violations of laws
45 regarding the payment of wages by strengthening enforcement
46 procedures, remedies and a variety of criminal, civil and
47 administrative sanctions against the violators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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