

[Third Reprint]

ASSEMBLY, No. 1526

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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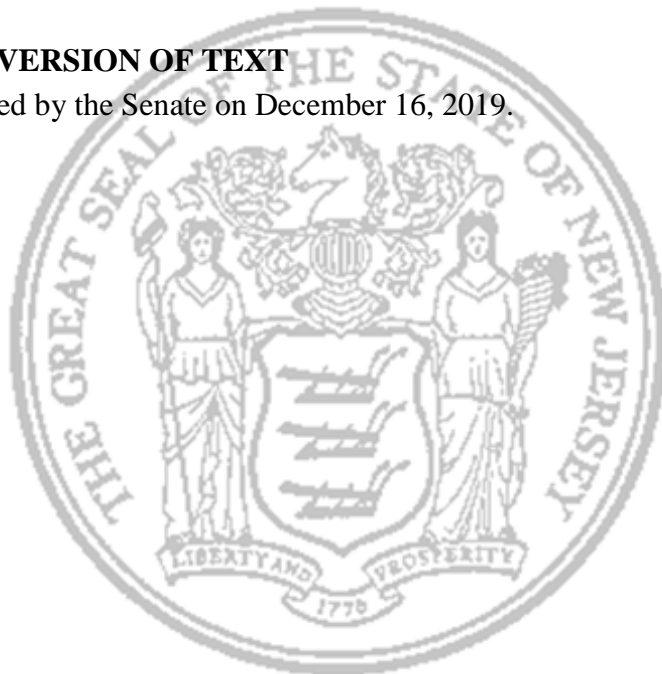
**Assemblywomen Downey, Murphy, Assemblyman Conaway,
Assemblywoman Pinkin and Assemblyman Houghtaling**

SYNOPSIS

Concerns payment of independent contractors.

CURRENT VERSION OF TEXT

As amended by the Senate on December 16, 2019.



(Sponsorship Updated As Of: 1/14/2020)

1 AN ACT concerning the payment of ²**[freelance workers]**
2 independent contractors² and supplementing chapter 11 of Title
3 34 of the Revised Statutes.

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

7
8 1. As used in this act:

9 “Client” means a sole proprietorship, partnership, corporation,
10 limited liability company, association or other business entity or a
11 nonprofit organization contracting with ²**[a freelance worker]** an
12 independent contractor² in any occupation, industry, trade, business
13 or service for ²**[compensation]** remuneration² equal to or greater
14 than \$600. The term “client” does not include a person or any
15 governmental entity, or a general acute care facility licensed by the
16 Commissioner of Health and Senior Services pursuant to P.L.1971,
17 c.136 (C.26:2H-1 et seq.), including rehabilitation, psychiatric, and
18 long-term acute facilities.

19 “Commissioner” means the Commissioner of Labor and
20 Workforce Development.

21 ²**[“Compensation”** means the earnings of a freelance worker.
22 The term “compensation” includes reimbursement for expenses.

23 “Freelance worker” means a sole proprietor who is not an
24 employee and who is hired or retained as a freelance worker by a
25 client to provide services in exchange for compensation in an
26 amount equal to or greater than \$600. “Freelance worker” shall not
27 mean:

- 28 a. any person who is a licensed medical professional;
- 29 b. any person engaged in the practice of law pursuant to the
30 contract at issue and who is a member in good standing of the bar of
31 the highest court of any state, possession, territory, commonwealth,
32 or the District of Columbia and who is not under any order of any
33 court suspending, enjoining, restraining, disbaring or otherwise
34 restricting the person in the practice of law;
- 35 c. any person who is licensed by the New Jersey Real Estate
36 Commission pursuant to R.S.45:15-1 et seq.;
- 37 d. any person who contracts to solicit orders in New Jersey as
38 the sales representative of a principal; or
- 39 e. any person subject to a collective bargaining agreement that
40 specifies wages, terms and conditions of employment.

41 “Principal” means a person or company engaged in the business
42 of manufacturing, who:

- 43 a. manufactures, produces, imports, or distributes a product for
44 wholesale;

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted March 4, 2019.

²Senate floor amendments adopted June 27, 2019.

³Senate floor amendments adopted December 16, 2019.

1 b. contracts with a sales representative to solicit orders for the
2 product; and

3 c. compensates the sales representative in whole or in part by
4 commission.】

5 “Independent Contractor” means an individual who has
6 performed services for remuneration, where³【:

7 a. The individual has been and will continue to be free from
8 control or direction over the performance of the service, both under
9 the individual’s contract of service and in fact; and

10 b. The service is either outside the usual course of the business
11 for which that service is performed, or that the service is performed
12 outside of all the places of business of the enterprise for which that
13 service is performed; and

14 c. The individual is customarily engaged in an independently
15 established trade, occupation, profession or business】 the services
16 are not regarded as employment for the purposes of the
17 "unemployment compensation law," R.S.43:21-1 et seq., because
18 the services meet the criteria set forth in R.S.43:21-19(i)(6)(A), (B),
19 and (C), except that the following individuals and their clients shall
20 not be subject to any provisions of sections 2 and 3 of this act (now
21 pending before the Legislature as this bill, P.L. , c. (C.))
22 regarding the recovery of remuneration by independent contractors,
23 including any provisions of those sections regarding the recovery of
24 liquidated damages:

25 a. an individual who is a licensed medical professional;

26 b. an individual engaged in the practice of law pursuant to the
27 contract at issue and who is a member in good standing of the bar of
28 the highest court of any state, possession, territory, commonwealth,
29 or the District of Columbia and who is not under any order of any
30 court suspending, enjoining, restraining, disbaring or otherwise
31 restricting the individual in the practice of law;

32 c. an individual who is licensed by the New Jersey Real Estate
33 Commission pursuant to R.S.45:15-1 et seq.;

34 d. an individual who contracts to solicit orders in New Jersey
35 as the sales representative of a principal; or

36 e. an individual subject to a collective bargaining agreement
37 that specifies wages, terms and conditions of employment³.

38 “Remuneration” means all compensation for personal services,
39 including commissions and bonuses and the cash value of all
40 compensation in any medium other than cash.²

41

42 2. a. ²【A freelance worker】 An independent contractor² shall
43 be paid the ²【compensation】 remuneration² earned in accordance
44 with agreed work terms. The contract between the ²【freelance
45 worker】 independent contractor² and client shall be reduced to
46 writing,¹and¹ signed by the ¹client and the¹ ²【freelance worker】
47 independent contractor² ¹【,】. Signed copies of the contract shall be

1 provided to the client and the ²[freelance worker] independent
2 contractor² and be¹ kept on file by the client for a period of not less
3 than six years, and made available ¹by the client¹ to the
4 commissioner upon request. The written contract shall include the
5 name and mailing address of both the client and the ²[freelance
6 worker] independent contractor², an itemization of all services to
7 be provided by the ²[freelance worker] independent contractor,
8 including clearly defined performance metrics to which the client
9 intends to hold the independent contractor², a description of how
10 ²[compensation] remuneration² that is earned and payable shall be
11 calculated, and the date on which the client shall pay the contracted
12 ²[compensation] remuneration² or the mechanism by which that
13 date will be calculated. ²[The failure of a client to provide the
14 written work terms, upon request of the commissioner, shall give
15 rise to a presumption that the terms that the freelance worker has
16 presented are the agreed work terms.]²

17 b. The contracted ²[compensation] remuneration² shall be paid
18 to the ²[freelance worker] independent contractor² either on or
19 before the date the ²[compensation] remuneration² is due under the
20 contract, or if the contract does not specify the date or the
21 mechanism by which the date will be determined, the ²[freelance
22 worker] independent contractor² shall be paid the ²[compensation]
23 remuneration² earned not later than 30 days after the completion of
24 the ²[freelance worker's] independent contractor's² services under
25 the contract. Once the ²[freelance worker] independent contractor²
26 has commenced performance of the services under the contract, the
27 client shall not require as a condition of timely payment that the
28 ²[freelance worker] independent contractor² accept less
29 ²[compensation] remuneration² than the amount of the contracted
30 ²[compensation] remuneration².

31 c. No client shall threaten, intimidate, discipline, harass, deny a
32 work opportunity to or discriminate against ²[a freelance worker]
33 an independent contractor², or take any other action that penalizes
34 ²[a freelance worker] independent contractor² for, or is reasonably
35 likely to deter ²[a freelance worker] an independent contractor²
36 from, exercising or attempting to exercise any right provided under
37 this act, or from obtaining a future work opportunity because the
38 ²[freelance worker] independent contractor² has done so.

39
40 3. Any ²[freelance worker] individual who believes himself
41 or herself to be an³ independent contractor² may file with the
42 commissioner a complaint regarding a violation of ²[any of]²
43 provisions of ²subsections a. or b.² section 2 of this act ²[for an
44 investigation of the complaint and statement setting the appropriate
45 remedy, if any]². ²Such a complaint shall be filed as a claim for

1 wages and³, if the commissioner determines that the individual is an
2 independent contractor, shall be³ investigated by the commissioner
3 under article 3 of chapter 11 of Title 34 of the Revised Statutes
4 (C.34:11-57 et seq.). ³【Services】 If the commissioner determines
5 that the individual is not an independent contractor, the services³
6 performed for remuneration shall be deemed employment and shall
7 be subject to P.L.1965, c.173 (C.34:11-4.1 et seq.) and P.L.1966,
8 c.113 (C.34:11-56a et seq.)³】, unless and until it is shown to the
9 satisfaction of the commissioner by the client that:

10 a. The individual has been and will continue to be free from
11 control or direction over the performance of the service, both under
12 his contract of service and in fact; and

13 b. The service is either outside the usual course of the business
14 for which that service is performed, or that the service is performed
15 outside of all the places of business of the enterprise for which that
16 service is performed; and

17 c. The individual is customarily engaged in an independently
18 established trade, occupation, profession or business³】.

19 The determination by the commissioner as to the employment
20 status of the worker as either an employee or an independent
21 contractor shall not be governed by the written contract required
22 under section 2 of this act. Rather, the determination by the
23 commissioner as to the employment status of the worker as either
24 an employee or an independent contractor shall be governed by the
25 facts of the relationship between the employer or client and the
26 worker. The written contract required under section 2 of this act
27 may be a factor considered by the commissioner in making a
28 determination regarding employment status, but shall not be
29 dispositive.

30 The commissioner may award back remuneration to an
31 independent contractor and, for second and subsequent violations of
32 this act, the commissioner may assess against the client an
33 additional amount as liquidated damages. Liquidated damages shall
34 be calculated by the commissioner as no more than 100 percent of
35 the total amount of the underlying contract.

36 The powers of the commissioner and procedural rights of
37 claimants under article 3 of chapter 11 of Title 34 of the Revised
38 Statutes (C.34:11-57 et seq.), shall apply to all claims filed under
39 this act by independent contractors with the commissioner for
40 remuneration as if the complaint for remuneration were a claim for
41 wages.²

42 Failure of a client to keep adequate records shall not constitute a
43 bar to the filing of a complaint by ²【a freelance worker】 an
44 independent contractor. The failure of a client to provide the
45 written work terms, upon request of the commissioner, shall give
46 rise to a presumption that the terms that the independent contractor
47 has presented are the agreed work terms².

1 ²[4. The commissioner may bring any legal action necessary,
2 including administrative action, on behalf of any freelance worker
3 that alleges a violation of any of the provisions of section 2 of this
4 act. In addition to any remedies provided pursuant to any other
5 laws of this State, the commissioner may assess against the client an
6 additional amount as liquidated damages, unless the client proves a
7 good faith basis for believing that its violation was in compliance
8 with this act. Liquidated damages shall be calculated by the
9 commissioner as no more than 100 percent of the total amount of
10 the underlying contract.]²

11
12 ²[5. If the commissioner determines that a client has violated a
13 provision of this act by failing to pay the compensation of a
14 freelance worker, the commissioner shall issue to the client an order
15 directing compliance therewith, which shall describe particularly
16 the nature of the alleged violation.]²

17
18 ²[6. a. The commissioner shall provide to each freelance
19 worker who files a complaint regarding a violation of any of the
20 provisions of section 2 of this act with a description of the
21 anticipated processing of the complaint, including the investigation,
22 case conference, potential civil and criminal penalties, and
23 collection procedures.

24 b. Each freelance worker and the representative of the
25 freelance worker, if any, shall be notified in a timely manner by the
26 commissioner of the following:

27 (1) any case conference before it is held, with the opportunity to
28 attend; and

29 (2) any award and collection of back compensation, civil
30 penalties, any intent to seek criminal penalties, and, in the event
31 that criminal penalties are sought, a notification of the outcome of
32 prosecution.

33 c. At the time the commissioner receives a complaint alleging a
34 violation of a provision of this act, the commissioner shall refer the
35 freelance worker to the navigation program provided pursuant to
36 section 9 of this act, in addition to providing the information
37 required pursuant to subsection a. of this section.]²

38
39 ²[7.]^{4.2} Any client who does not pay the ²[compensation]
40 remuneration² of its ²[freelance workers] independent contractors²
41 in accordance with the provisions of this act, and the officers,
42 agents, or representatives of any client who knowingly permit the
43 client to violate the provisions of this act by failing to pay the
44 ²[compensation] remuneration² of any of its ²[freelance workers]
45 independent contractors² in accordance with the provisions of this
46 act, shall be guilty of a disorderly persons offense for the first
47 offense, and in the event that any second or subsequent offense

1 occurs within six years of the date of conviction for a prior offense,
2 shall be guilty of a crime of the fourth degree for each offense.

3

4 ²[8.] 5.² a. Except as otherwise provided by law, ²[a freelance
5 worker] an independent contractor² alleging a violation of a
6 provision of this act may bring an action in any court of competent
7 jurisdiction for damages as described in subsection b. of this
8 section.

9 (1) Any action alleging a violation of subsection a. of section 2
10 of this act shall be brought within two years after the acts alleged to
11 have violated this act occurred.

12 (2) Any action alleging a violation of subsections b. or c. of
13 section 2 of this act shall be brought within six years after the acts
14 alleged to have violated this act occurred.

15 (3) ²[Within 10 days after having commenced a civil action
16 pursuant to this section, a plaintiff shall serve a copy of the
17 complaint upon the commissioner or the commissioner's designee.
18 The failure to serve a complaint to the commissioner shall not
19 adversely affect any plaintiff's cause of action.

20 (4)² A plaintiff who solely alleges a violation of subsection a.
21 of section 2 of this act shall prove that the plaintiff requested a
22 written contract prior to commencing the performance of any
23 contracted services.

24 b. A plaintiff who prevails on a claim alleging a violation of
25 this act shall be awarded damages as described in this subsection
26 and an award of reasonable attorney's fees and court costs.

27 (1) A plaintiff who prevails on a claim alleging a violation of
28 subsection a. of section 2 of this act shall be awarded damages of
29 \$250.

30 (2) A plaintiff who prevails on a claim alleging a violation of
31 subsection a. of section 2 of this act and on one or more claims
32 under other provisions of this act shall be awarded damages equal to
33 the value of the underlying contract for the violation of subsection
34 a. of section 2 in addition to the remedies specified in this
35 subsection for the other violations.

36 (3) In addition to any other damages awarded pursuant to this
37 subsection, a plaintiff who prevails on a claim alleging a violation
38 of subsection b. of section 2 of this act is entitled to an award of
39 double damages, injunctive relief and any other remedies deemed
40 appropriate by the court.

41 (4) In addition to any other damages awarded pursuant to this
42 subsection, a plaintiff who prevails on a claim alleging a violation
43 of subsection c. of section 2 of this act is entitled to damages equal
44 to the value of the underlying contract for each violation arising
45 under subsection c. of section 2 of this act.

46 c. The remedies provided by this section and the remedies
47 provided by any other provision of this act may be enforced

1 simultaneously or consecutively so far as not inconsistent with each
2 other.

3

4 ²[9.] 6.² a. The commissioner shall establish a navigation
5 program that provides information and assistance, as set forth in
6 subsection c. of this section, relating to the provisions of this act.
7 The program shall include assistance by a natural person by phone
8 and electronic mail and shall also include information accessible via
9 an Internet website maintained by the Department of Labor and
10 Workforce Development.

11 b. ²[The commissioner shall make available model contracts
12 on the website for use by the general public at no cost. The model
13 contracts shall be made available in English, Spanish, and any other
14 language that the commissioner determines is the first language of a
15 significant number of workers in the State. This determination shall
16 be, at the discretion of the commissioner, based on the numerical
17 percentages of all workers in the State for whom English or Spanish
18 is not a first language or in a manner consistent with any regulations
19 promulgated by the commissioner for this purpose.

20 c. ²The navigation program shall provide ²[the following:

21 (1) general court information and information about procedures
22 under this act;

23 (2) information about available templates and relevant court
24 forms;

25 (3) general information about classifying persons as employees
26 or freelance workers;

27 (4) information about obtaining translation and interpretation
28 services and other courtroom services;

29 (5) a list of organizations that can be used for the identification
30 of attorneys; and

31 (6) other ²relevant information, as determined by the
32 commissioner, related to the submission of a complaint by ²[a
33 freelance worker or] an independent contractor to the commissioner
34 under section 3 of this act and links to the Internet website of the
35 Administrative Office of the Courts regarding² the commencement
36 of a civil action under the provisions of this act by ²[a freelance
37 worker] an independent contractor².

38

39 ²[10.] 7.² This act shall take effect immediately.