

[Third Reprint]

ASSEMBLY, No. 2903

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Co-Sponsored by:

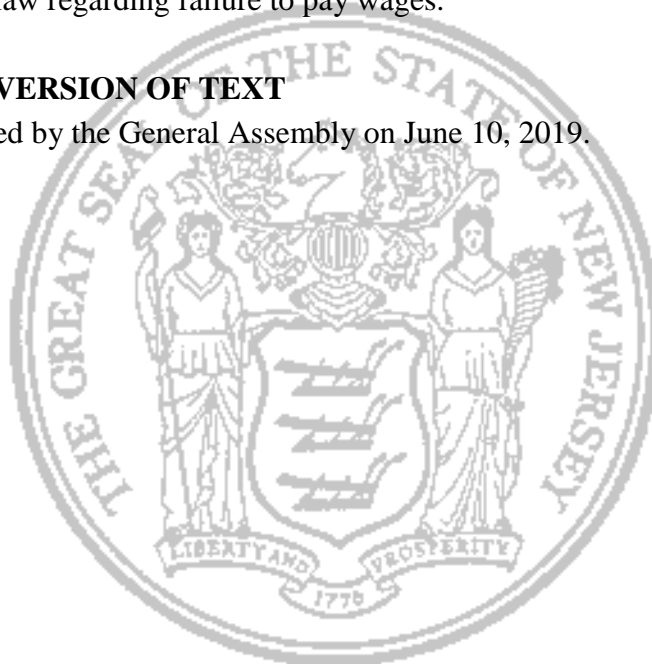
Assemblymen Benson, Egan, Assemblywoman Timberlake, Assemblyman Verrelli, Assemblywoman Tucker, Assemblyman Danielsen, Assemblywomen Murphy, Downey, Reynolds-Jackson and McKnight

SYNOPSIS

Concerns law regarding failure to pay wages.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 10, 2019.



(Sponsorship Updated As Of: 6/28/2019)

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 ²**[article]** articles 1 and² 3 of
4 chapter 11 of Title 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**[**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

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:

¹Assembly ALA committee amendments adopted January 24, 2019.

²Assembly AAP committee amendments adopted March 18, 2019.

³Assembly floor amendments adopted June 10, 2019.

1 shall be fined \$500 plus a penalty equal to 20 percent of any wages
2 owed for a first offense, and \$1,000 plus a penalty equal to 20
3 percent of any wages owed for subsequent offenses. Any sum
4 collected as a fine or penalty pursuant to this subsection shall be
5 applied toward enforcement and administration costs of the
6 Division of Wage and Hour Compliance in the Department of Labor
7 and Workforce Development.

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

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

22 j. For purposes of this section:

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

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

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

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

1 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
 2 and article 3 of chapter 11 of Title 34 of the Revised Statutes
 3 (R.S.34:11-57 et seq.), but “State wage and hour laws” do not
 4 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150
 5 (C.34:11-56.25 et seq.), or "The Public Works Contractor
 6 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.):

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

- 9 (1) The workers’ compensation law, R.S.34:15-1 et seq.;
 10 (2) The “unemployment compensation law,” R.S.43:21-1 et
 11 seq.;
 12 (3) The “Temporary Disability Benefits Law,” P.L.1948, c.110
 13 (C.43:21-25 et al.);
 14 (4) P.L.2008, c.17 (C.43:21-39.1 et al.); and
 15 (5) The “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
 16 seq.

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

22 (cf: P.L.1999, c.90, s.10)]¹

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

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

42 ²(2) If the commissioner is notified pursuant to subsection g. of
 43 this section of a conviction of an employer, the commissioner shall,
 44 as an alternative to, or in addition to, any other actions taken in the
 45 enforcement of the laws violated by the employer, have an audit of
 46 the employer and any successor firm of the employer conducted not
 47 more than 12 months after receipt of the notification.²

1 b. If, in an audit conducted pursuant to subsection a. of this
2 section, the commissioner determines that the employer or any
3 successor firm to the employer has continued in its failure to
4 maintain or report records as required by those laws ²~~and~~ ²or²
5 continued in its failure to pay wages, benefits, taxes or other
6 contributions or assessments as required by those laws, or if the
7 commissioner is notified pursuant to subsection g. of this section of
8 a ²[subsequent]² conviction of the employer ²[under subsection a.
9 of section 10 of P.L.1999, c.90 (C.2C:40A-2)] and the offense
10 resulting in the conviction occurred subsequent to an audit
11 conducted pursuant to subsection a. of this section², the
12 commissioner:

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

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

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

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

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

32 (e) The duration of the violation;

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

35 (g) Any prior misconduct by the employer or successor firm;
36 and

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

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

41 c. If, in the subsequent audit or inspection conducted pursuant
42 to subsection b. of this section, the commissioner determines that
43 the employer or successor firm has continued in its failure to
44 maintain or report records as required pursuant to State wage,
45 benefit and tax laws, as defined in section 1 of this act, and
46 continued in its failure to pay wages, benefits, taxes or other
47 contributions or assessments as required by those laws, or if the
48 commissioner is notified pursuant to subsection g. of this section of

1 a ²【subsequent】² conviction of the employer ²【under subsection a.
2 of section 10 of P.L.1999, c.90 (C.2C:40A-2)】 for an offense
3 occurring after the audit conducted pursuant to subsection b. of this
4 section², the commissioner, after affording the employer or
5 successor firm notice and an opportunity for a hearing in
6 accordance with the provisions of the "Administrative Procedure
7 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall issue a written
8 determination directing any appropriate agency to permanently
9 revoke any one or more licenses that are held by the employer or
10 any successor firm to the employer and that are necessary to operate
11 the employer or successor firm.

12 d. Upon receipt of any written determination of the
13 commissioner directing an agency to suspend or revoke a license
14 pursuant to this section, and notwithstanding any other law, the
15 agency shall immediately suspend or revoke the license.

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

34 f. If, in the course of an audit or inspection conducted pursuant
35 to this section, the commissioner discovers that an employee of the
36 employer or of any successor firm of the employer has failed to
37 provide compensation to the employee as required under any of the
38 State wage and hour laws as defined ²【section 10 of P.L.1999, c.90
39 (C.2C:40A-2)】 R.S.34:11-57², then the commissioner shall initiate
40 a wage claim on behalf of the employee pursuant to R.S.34:11-58.

41 g. Upon the conviction of an employer under subsection a. of
42 section 10 of P.L.1999, c.90 (C.2C:40A-2) ²【the Attorney General,
43 the Attorney General's designee,】, section 13 of P.L. _____,
44 c. (C.) (pending before the Legislature as this bill), subsection a.
45 of section 10 of P.L.1965, c.173 (C.34:11-4.10), subsection a. of
46 section 25 of P.L.1966, c.113 (C.34:11-56a24), or N.J.S.2C:20-2 if
47 the property stolen consists of compensation the employer failed to

1 provide to an employee under any State wage and hour law as
2 defined in R.S.34:11-57, the prosecutor² or the court shall notify the
3 commissioner of the employer's conviction.

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

5
6 ¹~~[3.]~~ 2.¹ Section 10 of P.L.1965, c.173 (C.34:11-4.10) is
7 amended to read as follows:

8 10. a. Any employer who knowingly ²~~[and willfully]~~ fails to
9 pay the full amount of wages to an employee agreed to or required
10 by, or in the manner required by, the provisions of article 1 of
11 chapter 11 of Title 34 of the Revised Statutes and all acts
12 supplementing that article (R.S.34:11-2 et al.), or who knowingly²
13 violates any ²other² provision of P.L.1965, c.173 (34:11-4.1 et
14 seq.), or who ²[discharges, or in any other manner discriminates]
15 takes a retaliatory action² against an employee ²by discharging or in
16 any other manner discriminating against the employee² because the
17 employee has made a complaint to that employee's employer, to the
18 commissioner, or to that employee's authorized representative, that
19 the employer has not paid the employee the full amount of wages
20 agreed upon or required by, and in the manner required by, the
21 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 or because the employee has caused to be instituted or is about to
24 cause to be instituted any proceeding under or related to that article
25 or those acts, or because that employee has testified or is about to
26 testify in any proceeding under or relating to that article or those
27 acts, or because the employee has informed any ²[person]
28 employee of the employer² about rights under State laws regarding
29 wages and hours worked, shall be guilty of a disorderly persons
30 offense and, upon conviction for a ¹first¹ violation, shall be
31 punished by a fine of not less than ¹~~[\$100]~~ ¹\$500¹ nor more than
32 \$1,000 ¹or by imprisonment for not less than 10 nor more than 90
33 days or by both the fine and imprisonment and, upon conviction for
34 a second ²or subsequent² violation, be punished by a fine of not less
35 than \$1,000 nor more than \$2,000 or by imprisonment for not less
36 than 10 nor more than 100 days or by both the fine and
37 imprisonment¹. ²¹Upon conviction for a third or subsequent
38 violation, an employer shall be guilty of a crime of the fourth
39 degree and be punished by a fine of not less than \$2,000 nor more
40 than \$10,000 or by imprisonment for up to 18 months or by both the
41 fine and imprisonment.¹]² Each ¹week, in any¹ day ¹~~[during]~~ ¹of¹
42 which any violation of ~~[this act]~~ article 1 of chapter 11 of Title 34
43 of the Revised Statutes and all acts supplementing that article
44 (R.S.34:11-2 et al.) continues shall constitute a separate and distinct
45 offense. In the case of a discharge or other discriminatory action
46 against the employee which is in violation of this subsection, the

1 employer shall ²also² be required to offer reinstatement in
2 employment to the discharged employee²], unless the reinstatement
3 is prohibited by law,]² and to correct the discriminatory action, and
4 also to pay to the employee, in full, all wages lost as a result of that
5 discharge or discriminatory action, plus ²[any reasonable cost of
6 the action, and]² liquidated damages equal to ²not more than² 200
7 percent of the wages due, under penalty of contempt proceedings.
8 Taking an adverse action against an employee within ninety days of
9 the employee filing a complaint with the commissioner ²or a claim
10 or action being brought by or on behalf of the employee in a court
11 of competent jurisdiction² for a violation of article 1 of chapter 11
12 of Title 34 of the Revised Statutes and all acts supplementing that
13 article (R.S.34:11-2 et al.) shall ²[raise a presumption] be
14 considered presumptive evidence² that the ²employer's² action was
15 ²[a discriminatory action] knowingly² taken in retaliation²], which
16 may be rebutted only by clear and convincing evidence that the
17 action was taken for other, permissible, reasons] against the
18 employee². An employee complaint or other communication need
19 not make explicit reference to any section or provision of any State
20 law regarding wages and hours worked to trigger the protections of
21 this section.

22 b. As an alternative to or in addition to any other sanctions
23 provided by law for violations of P.L.1965, c.173 (C.34:11-4.1 et
24 seq.), when the Commissioner of Labor and Workforce
25 Development finds that an employer has violated that act, or taken
26 any ²[discriminatory] retaliatory² action against the employee in
27 violation of subsection a. of this section, the commissioner is
28 authorized to assess and collect administrative penalties, up to a
29 maximum of \$250 for a first violation and up to a maximum of
30 \$500 for each subsequent violation, specified in a schedule of
31 penalties to be promulgated as a rule or regulation by the
32 commissioner in accordance with the "Administrative Procedure
33 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the
34 amount of the penalty imposed because of a violation, the
35 commissioner shall consider factors which include the history of
36 previous violations by the employer, the seriousness of the
37 violation, the good faith of the employer and the size of the
38 employer's business. No administrative penalty shall be levied
39 pursuant to this section unless the Commissioner of Labor and
40 Workforce Development provides the alleged violator with
41 notification of the violation and of the amount of the penalty by
42 certified mail and an opportunity to request a hearing before the
43 commissioner or his designee within 15 days following the receipt
44 of the notice. If a hearing is requested, the commissioner shall
45 issue a final order upon such hearing and a finding that a violation
46 has occurred. If no hearing is requested, the notice shall become a
47 final order upon expiration of the 15-day period. Payment of the
48 penalty is due when a final order is issued or when the notice

1 becomes a final order. Any penalty imposed pursuant to this
2 section may be recovered with costs in a summary proceeding
3 commenced by the commissioner pursuant to **["the penalty**
4 **enforcement law"** (N.J.S.2A:58-1 et seq.)**]** the "Penalty
5 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
6 Any sum collected as a fine or penalty pursuant to this section shall
7 be applied toward enforcement and administration costs of the
8 Division of Workplace Standards in the Department of Labor and
9 Workforce Development.

10 c. If any employer fails to pay the full amount of wages to an
11 employee agreed to or required by, or in the manner required by,
12 the provisions of article 1 of chapter 11 of Title 34 of the Revised
13 Statutes and all acts supplementing that article (R.S.34:11-2 et al.),
14 the employee may recover in a civil action the full amount of any
15 wages due, or any wages ²[due] lost² because of any
16 ²[discriminatory] retaliatory² action ²taken² in violation of
17 subsection a. of this section, plus an amount of liquidated damages
18 equal to ³not more than³ 200 percent of the wages ²lost or of the
19 wages² due, together with costs and reasonable attorney's fees as
20 are allowed by the court, except that if there is an agreement of the
21 employee to accept payment of the unpaid wages supervised by the
22 commissioner pursuant to section 9 of P.L.1965, c.173 (C.34:11-
23 4.9) or R.S.34:11-58, the liquidated damages shall be equal to ³not
24 more than³ 200 percent of wages that were due prior to the
25 supervised payment. ³The payment of liquidated damages shall not
26 be required for a first violation by an employer if the employer
27 shows to the satisfaction of the court that the act or omission
28 constituting the violation was an inadvertent error made in good
29 faith and that the employer had reasonable grounds for believing
30 that the act or omission was not a violation, and the employer
31 acknowledges that the employer violated the law and pays the
32 amount owed within 30 days of notice of the violation.³ ²In a case
33 of retaliation against an employee in violation of the provisions of
34 subsection a. of this section, the employer shall also be required to
35 offer reinstatement in employment to the discharged employee and
36 take other actions as needed to correct the retaliatory action. For
37 purposes of this subsection, an employer taking an adverse action
38 against an employee within ninety days of the employee filing a
39 complaint with the commissioner, or a claim or action being
40 brought by or on behalf of the employee in a court of competent
41 jurisdiction, for a violation of provisions of article 1 of chapter 11
42 of Title 34 of the Revised Statutes and all acts supplementing that
43 article (R.S.34:11-2 et al.) shall raise a presumption that the
44 employer's action was taken in retaliation against the employee,
45 which presumption may be rebutted only by clear and convincing
46 evidence that the action was taken for other, permissible, reasons.²
47 Any agreement by the employee to work for, or accept, wages paid
48 which are less than the amount agreed to or required by law, or paid
49 in a manner other than that required by article 1 of chapter 11 of

1 Title 34 of the Revised Statutes and all acts supplementing that
2 article (R.S.34:11-2 et al.), shall be no defense to the action. The
3 employee shall be entitled to maintain the action for and on behalf
4 of other similarly situated employees, or designate an agent or
5 representative to maintain the action for and on behalf of all
6 similarly situated employees. The employee may bring the action
7 ²[to recover] for all appropriate relief, including reinstatement, the
8 payment of damages and the recovery of lost wages or² unpaid
9 wages pursuant to this section in the Superior Court³ [, and may
10 bring the action in the Division of Small Claims of the Superior
11 Court, Law Division, Special Civil Part if the sum of the unpaid
12 wages and the liquidated damages does not exceed the jurisdictional
13 limits of the Division of Small Claims]³. Upon the request of any
14 employee not paid the full wages agreed upon or required by law
15 and in the manner required by the provisions of article 1 of chapter
16 11 of Title 34 of the Revised Statutes and all acts supplementing
17 that article (R.S.34:11-2 et al.), the commissioner may take an
18 assignment of the wage claim in trust for the assigning employee
19 and may bring any legal action necessary to collect the claim, and
20 the employer shall be required to pay to the employee the unpaid
21 wages and liquidated damages equal to ³not more than³ 200 percent
22 of the amount of the unpaid wages and pay to the commissioner the
23 costs and reasonable attorney's fees as determined by the court.
24 ³The payment of liquidated damages shall not be required for a first
25 violation by an employer if the employer shows to the satisfaction
26 of the court that the act or omission constituting the violation was
27 an inadvertent error made in good faith and that the employer had
28 reasonable grounds for believing that the act or omission was not a
29 violation, and the employer acknowledges that the employer
30 violated the law and pays the amount owed within 30 days of notice
31 of the violation.³

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

33
34 ¹[4.] ^{3.1} Section 25 of P.L.1966, c.113 (C.34:11-56a24) is
35 amended to read as follows:

36 25. a. Any employer who ²[discharges or in any other manner
37 discriminates] takes a retaliatory action² against any employee ²by
38 discharging or in any other manner discriminating against the
39 employee² because the employee has made any complaint to his
40 employer, to the commissioner, the director or to their authorized
41 representatives, or to a representative of the employee, that he has
42 not been paid wages in accordance with the provisions of this act,
43 or because such employee has caused to be instituted or is about to
44 cause to be instituted any proceeding under or related to this act, or
45 because such employee has testified or is about to testify in any
46 such proceeding, or because such employee has served or is about
47 to serve on a wage board, or because the employee has informed
48 any ²[person] employee of the employer² about rights under State
49 laws regarding wages and hours of work, shall be guilty of a

1 disorderly persons offense and shall, upon conviction²~~therefor~~ for
2 a first violation², be fined not less than ¹~~[\$100]~~ \$500¹ nor more
3 than \$1,000 ¹or by imprisonment for not less than 10 nor more than
4 90 days or by both the fine and imprisonment and, upon conviction
5 for a second ²or subsequent² violation, be punished by a fine of not
6 less than \$1,000 nor more than \$2,000 or by imprisonment for not
7 less than 10 nor more than 100 days or by both the fine and
8 imprisonment¹. ²~~Upon conviction for a third or subsequent~~
9 violation, an employer shall be guilty of a crime of the fourth
10 degree and be punished by a fine of not less than \$2,000 nor more
11 than \$10,000 or by imprisonment for up to 18 months or by both the
12 fine and imprisonment.¹ Such² The² employer shall ²also² be
13 required, as a condition of such judgment of conviction, to offer
14 reinstatement in employment to ²~~any such~~ the² discharged
15 employee²~~, unless the reinstatement is prohibited by law.~~² and to
16 correct any such discriminatory action, and also to pay to any such
17 employee in full, all wages lost as a result of such discharge or
18 discriminatory action and an additional amount of liquidated
19 damages equal to ²not more than² 200 percent of the wages ²~~due~~
20 lost², under penalty of contempt proceedings for failure to comply
21 with such requirement. Taking an adverse action against an
22 employee within ninety days of the employee filing a complaint
23 with the commissioner², or a claim or action being brought by or on
24 behalf of the employee in a court of competent jurisdiction,² for a
25 violation of P.L.1966, c.113 (C.34:11-56a et seq.) shall ²~~raise a~~
26 presumption² be considered presumptive evidence² that the
27 ²employer's² action was ²~~a discriminatory action~~ knowingly²
28 taken in retaliation²~~, which may be rebutted only by clear and~~
29 convincing evidence that the action was taken for other,
30 permissible, reasons² against the employee². An employee
31 complaint or other communication need not make explicit reference
32 to any section or provision of State law regarding wages or hours
33 worked to trigger the protections of this section.

34 b. As an alternative to or in addition to any other sanctions
35 provided by law for violations of P.L.1966, c.113 (C.34:11-56a et
36 seq.), when the Commissioner of Labor and Workforce
37 Development finds that an employer has violated that act, or taken
38 any ²~~discriminatory~~retaliatory² action against the employee in
39 violation of subsection a. of this section, the commissioner is
40 authorized to assess and collect administrative penalties, up to a
41 maximum of \$250 for a first violation and up to a maximum of
42 \$500 for each subsequent violation, specified in a schedule of
43 penalties to be promulgated as a rule or regulation by the
44 commissioner in accordance with the "Administrative Procedure
45 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the
46 amount of the penalty imposed because of a violation, the
47 commissioner shall consider factors which include the history of
48 previous violations by the employer, the seriousness of the

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

23
24 ¹**[5.] 4.**¹ Section 26 of P.L.1966, c.113 (C.34:11-56a25) is
25 amended to read as follows:

26 26. If any employee is paid by an employer less than the
27 minimum fair wage to which **[such]** the employee is entitled under
28 the provisions of **[this act]** P.L.1966, c.113 (C.34:11-56a et seq.) or
29 by virtue of a minimum fair wage order **[such]**², or suffers a loss of
30 wages or other damages because of a retaliatory action by the
31 employer in violation of the provisions of section 24 of P.L.1966,
32 c.113 (C.34:11-56a24)², the employee may recover in a civil action
33 the full amount of **[such]** that minimum wage less any amount
34 actually paid to him or her by the employer **[together with]**², or any
35 wages lost due to the retaliatory action,² and an additional amount
36 equal to ³not more than³ 200 percent of the amount of the unpaid
37 minimum wages ²or wages lost due to retaliatory action² as
38 liquidated damages, plus costs and **[such]** reasonable attorney's
39 fees as **[may be allowed]** determined by the court, **[and any]**
40 except that if there is an agreement of the employee to accept
41 payment of the unpaid wages or compensation supervised by the
42 commissioner pursuant to section 24 of P.L.1966, c.113 (C.34:11-
43 56a23) or R.S.34:11-58, the liquidated damages shall be equal to
44 ³not more than³ 200 percent of wages that were due prior to the
45 supervised payment. ³The payment of liquidated damages shall not
46 be required for a first violation by an employer if the employer
47 shows to the satisfaction of the court that the act or omission

1 constituting the violation was an inadvertent error made in good
2 faith and that the employer had reasonable grounds for believing
3 that the act or omission was not a violation, and the employer
4 acknowledges that the employer violated the law and pays the
5 amount owed within 30 days of notice of the violation.³ ²In a case
6 of retaliation against an employee in violation of the provisions of
7 section 24 of P.L.1966, c.113 (C.34:11-56a24), the employer shall
8 also be required to offer reinstatement in employment to the
9 discharged employee, and take other actions as needed to correct
10 the retaliatory action. For purposes of this section, an employer
11 taking an adverse action against an employee within 90 days of the
12 employee filing a complaint with the commissioner or a claim or
13 action being brought by or on behalf of the employee in a court of
14 competent jurisdiction for a violation of P.L.1966, c.113 (C.34:11-
15 56a et seq.) shall raise a presumption that the employer's action was
16 taken in retaliation against the employee, which presumption may
17 be rebutted only by clear and convincing evidence that the action
18 was taken for other, permissible, reasons.² Any agreement between
19 【such】 the employee and the employer to work for less than 【such】
20 the minimum fair wage shall be no defense to the action. An
21 employee shall be entitled to maintain 【such】 the action for and on
22 behalf of himself or other employees similarly situated, and 【such】
23 the employee and employees may designate an agent or
24 representative to maintain 【such】 the action for and on behalf of all
25 employees similarly situated. The employee may bring the action
26 to recover unpaid minimum wages², or wages lost due to retaliatory
27 action, or other appropriate relief, including reinstatement and
28 payment of damages² pursuant to this section^{2,2} in the Superior
29 Court³【, and may bring the action in the Division of Small Claims
30 of the Superior Court, Law Division, Special Civil Part if the sum
31 of the amount of unpaid minimum wages² or lost wages² and the
32 amount of liquidated damages does not exceed the jurisdictional
33 limits of the Division of Small Claims】³.

34 At the request of any employee paid less than the minimum wage
35 to which 【such】 the employee was entitled under the provisions of
36 【this act】 P.L.1966, c.113 (C.34:11-56a et seq.) or under an order,
37 the commissioner may take an assignment of the wage claim in trust
38 for the assigning employee and may bring any legal action
39 necessary to collect the claim, and the employer shall be required to
40 pay to the employee the unpaid wages and liquidated damages equal
41 to ²not more ³【then²】 than³ 200 percent the amount of the unpaid
42 wages and pay to the commissioner the costs and 【such】 reasonable
43 attorney's fees as 【may be allowed】 determined by the court. ³The
44 payment of liquidated damages shall not be required for a first
45 violation by an employer if the employer shows to the satisfaction
46 of the court that the act or omission constituting the violation was
47 an inadvertent error made in good faith and that the employer had

1 reasonable grounds for believing that the act or omission was not a
2 violation, and the employer acknowledges that the employer
3 violated the law and pays the amount owed within 30 days of notice
4 of the violation.³

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

6
7 ¹**[6.] 5.**¹ Section 1 of P.L.1967, c.216 (C.34:11-56a25.1) is
8 amended to read as follows:

9 1. No claim for unpaid minimum wages, unpaid overtime
10 compensation, ²unlawful discharge or other discriminatory acts
11 taken in retaliation against the employee,² or other damages under
12 this act shall be valid with respect to any such claim which has
13 arisen more than **[2] six** years prior to the commencement of an
14 action for the recovery thereof. In determining when an action is
15 commenced, the action shall be considered to be commenced on the
16 date when a complaint is filed with the Commissioner of the
17 Department of Labor and **[Industry] Workforce Development** or
18 the Director of **[the] Wage and Hour [Bureau] Compliance**, and
19 notice of such complaint is served upon the employer; or, where an
20 audit by the Department of Labor and **[Industry] Workforce**
21 Development discloses a probable cause of action for unpaid
22 minimum wages, unpaid overtime compensation, or other damages,
23 and notice of such probable cause of action is served upon the
24 employer by the Director of **[the] Wage and Hour [Bureau]**
25 Compliance; or where a cause of action is commenced in a court of
26 appropriate jurisdiction.

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

28
29 ¹**[7.] 6.**¹ R.S.34:11-57 is amended to read as follows:

30 34:11-57. As used in this article:

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

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

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

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

43 "Employer" means any person, partnership, firm or corporation
44 employing another for hire.

45 "Legal services organization" means a public, or nonprofit
46 private, organization funded with public or private funds, or both,
47 that provides counseling or advice related to wage protection laws,

1 preparation of legal documents, or representation of any person
2 before a court or administrative agency.

3 “State wage and hour laws” means article 1 of chapter 11 of Title
4 34 of the Revised Statutes and all acts supplementing that article
5 (R.S.34:11-2 et al.), P.L.1966, c.113 and all acts supplementing that
6 act (C.34:11-56a et al.), P.L.2005, c.379 (C.34:11-56.58 et seq.),
7 and article 3 of chapter 11 of Title 34 of the Revised Statutes
8 (R.S.34:11-57 et seq.), but “State wage and hour laws” do not
9 include the "New Jersey Prevailing Wage Act," P.L.1963, c.150
10 (C.34:11-56.25 et seq.), or "The Public Works Contractor
11 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

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

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

18

19 ¹**[8.] 7.**¹ R.S.34:11-58 is amended to read as follows:

20 34:11-58. a. An employee may file a claim for wages against
21 an employer under this section or any of the other State wage and
22 hours laws for wages owed related to work performed², including
23 but not limited to wages owed related to unpaid minimum wages,
24 unpaid overtime compensation, wages lost because of unlawful
25 discharge or other discriminatory acts taken in retaliation against
26 the employee,² up to six years prior to the date the claim for wages
27 is filed.

28 b. An employer found to owe an employee wages shall pay the
29 employee the wages owed plus liquidated damages equal to ²not
30 more than² 200% of the wages owed, exclusive of any costs or fees.

31 c. The commissioner is authorized and empowered to
32 investigate any claim for wages due an employee and in such
33 investigation may summon the defendant, subpoena witnesses,
34 administer oaths, take testimony and shall upon such proceeding
35 make a decision or award **[**when the sum in controversy, exclusive
36 of costs, does not exceed \$30,000.00**]** ¹when the sum in
37 controversy, exclusive of costs, does not exceed \$50,000¹.

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

40 Such judgment shall be entered in the same manner and have the
41 same effect and be subject to the same proceedings as are
42 judgments rendered in suits duly heard and determined by courts of
43 competent jurisdiction.

44 d. Upon an investigation of a wage claim initiated pursuant to
45 this section or any of the other State wage and hours laws, if an
46 employer fails to provide sufficient employee records, as required
47 to be kept under any State wage and hour laws, there shall be a

1 rebuttable presumption that the employee worked for the employer
2 for the period of time and for the amount of wages as alleged in the
3 wage claim. ¹The rebuttable presumption shall not apply to an
4 employer that can demonstrate it does not have sufficient employee
5 records as a result of record destruction due to a natural disaster.¹

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

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

25 (1) inform the employer ²[of] that² the ²[commissioner's
26 intention to] commissioner may² conduct an audit of the employer
27 or any successor firm of the employer pursuant to section 2 of
28 P.L.2009, c.194 (C.34:1A-1.12); and

29 (2) notify the Division of Taxation in the Department of the
30 Treasury of the decision and ²may² recommend that the division
31 conduct an audit of the employer to ensure the proper withholding
32 and payment of payroll and other taxes by the employer.

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

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

40

41 ¹[9.] 8.¹ (New section) a. If an employer fails to comply with
42 a final determination of the commissioner or a judgment of a court,
43 including a small claims court, made under the provisions of State
44 wage and hour laws or of section 10 of P.L.1999, c.90 (C.2C:40-2),
45 to pay an employee any wages owed or damages awarded within ten
46 days of the time that the determination or judgement requires the
47 payment, the commissioner may do either or both of the following:

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

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

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

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

30 d. A rebuttable presumption that an employer has established a
31 successor entity shall arise if the two share at least ¹~~three~~ two¹ of
32 the following capacities or characteristics:

33 (1) perform similar work ¹within the same geographical area¹;

34 (2) occupy the same premises;

35 (3) have the same telephone or fax number;

36 (4) have the same email address or Internet website;

37 (5) ¹~~perform work in the same geographical area;~~

38 (6) ¹~~employ substantially the same work force~~¹, administrative
39 employees, or both¹;

40 ³~~[(7)]~~ (6)³ utilize the same tools ¹~~and~~, facilities, or¹
41 equipment;

42 ³~~[(8)]~~ (7)³ employ or engage the services of any person or
43 persons involved in the direction or control of the other; or

44 ³~~[(9)]~~ (8)³ list substantially the same work experience.

45
46 ¹~~10.]~~ 9.¹ (New section) a. A client employer and a labor
47 contractor providing workers to the client employer shall be subject

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

15 b. This section shall not be interpreted as:

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

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

28 c. As used in this section:

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

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

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

44

45 ¹**[11.] 10.**¹ (New section) Each employer shall provide each
46 current employee and each newly hired employee of the employer, a
47 written copy of the statement produced by the department pursuant
48 to ²**[subsection c. of]**² section ²**[12] 11**² of P.L. , c. (C.)

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

5
6 ¹~~12.~~ 11.¹ (New section) The department, for the purpose of
7 supporting the enforcement of the provisions of State wage and
8 hour laws and the provisions of section 10 of P.L.1999, c.90
9 (C.2C:40A-2), ²shall:

10 a. ²may contract with community-based organizations and legal
11 services organizations to disseminate information to day laborers,
12 migrant laborers, temporary laborers, or any other type of employee
13 concerning the protections afforded by State wage and hour laws
14 and section 10 of P.L.1999, c.90 (C.2C:40A-2), and the process by
15 which an individual may take actions under those laws²;

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

21 c. ²and shall produce, and make available to the public on the
22 website of the department ²in printable form², a statement of
23 employee rights under the provisions of State wage and hour laws
24 and the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2),
25 with an explanation of how to file a claim or take an action pursuant
26 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
31 ²and shall provide that, in any case in which the community-based
32 or legal services organization assists or represents employees
33 pursuant to subsection b. of this section, 50 percent of any fees or
34 penalties collected by the department shall be paid to the
35 organization for services provided pursuant to contracts entered into
36 pursuant to this section, and that². Any² payment² made to an
37 organization under a contract² shall be regarded as an enforcement
38 and administrative cost of the Division of Workplace Standards of
39 the department.

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

1 if the individual agrees to accept payment of the unpaid wages
2 supervised by the commissioner.

3
4 ¹~~13.~~ 12.¹ (New section) a. The commissioner, in consultation
5 with the Administrative Director of the Courts and the Attorney
6 General, shall compile and prominently place on a website,
7 maintained by the department and available to the public, an annual
8 report evaluating the effectiveness and efficiency of the
9 enforcement and administration of wage claims and wage
10 collections. The report shall include, but not be limited to:

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

15 (2) an enumeration and description of all community-based and
16 legal services organizations contracted by the department to support
17 the enforcement; and

18 (3) recommendations for strengthening the implementation and
19 enforcement of P.L. , c. (C.) (pending before the
20 Legislature as this bill).

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

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

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

34 (3) the number of affected employees, and the amount of wages
35 found owed; and

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

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

41
42 ²13. (New section) a. A person commits the crime of pattern of
43 wage nonpayment if the person knowingly commits an act that
44 violates the provisions of N.J.S.2C:40A-2, N.J.S.2C:20-2 if the
45 property stolen consists of compensation the employer failed to
46 provide to an employee as required under the provisions of any
47 State wage and hour law as defined in R.S.34:11-57, subsection a.
48 of section 10 of P.L.1965, c.173 (C.34:11-4.10), or subsection a. of

1 section 25 of P.L.1966, c.113 (C.34:11-56a24), if the person has, on
2 two or more prior occasions, been convicted of a violation of the
3 provisions of any of those laws. It shall not be a defense that the
4 violations were not part of a common plan or scheme, or did not
5 have similar methods of commission.

6 b. Pattern of wage non-payment is a crime of the third degree,
7 except that the presumption of nonimprisonment set forth in
8 subsection e. of N.J.S.2C:44-1 for persons who have not previously
9 been convicted of an offense shall not apply. Notwithstanding the
10 provisions of N.J.S.2C:1-8 or any other law, a conviction of pattern
11 of wage non-payment shall not merge with a conviction of violation
12 of N.J.S.2C:40A-2, N.J.S.2C:20-2, subsection a. of section 10 of
13 P.L.1965, c.173 (C.34:11-4.10), subsection a. of section 25 of
14 P.L.1966, c.113 (C.34:11-56a24), or any other criminal offense, nor
15 shall such other conviction merge with a conviction under this
16 section.

17 c. An employer found to be in violation of this section shall be
18 deemed to have caused loss to the employees in the amount by
19 which the employees were paid less than the full wages agreed upon
20 or required by law and shall be subject to the provisions of
21 N.J.S.2C:43-3 regarding fines and restitution to victims and be
22 subject to other pertinent provisions of Title 2C of the New Jersey
23 Statutes, including, but not limited to, N.J.S.2C:43-4, 2C:43-6 and
24 2C:44-1.²

25

26 ¹[14.] ²[13.¹] 14.² This act shall take effect immediately²,
27 except that section 13 shall take effect on the first day of the third
28 month following enactment².