

ASSEMBLY, No. 3135

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

SYNOPSIS

Establishes New Jersey Commission on Construction Industry Independent Contractor Reform.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** establishing a commission to review and make
2 recommendations regarding employee misclassification.

3

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

6

7 1. The Legislature finds and declares that:

8 a. The practice of misclassifying workers as alleged
9 independent contractors, rather than in accordance with their actual
10 status as employees, causes serious negative repercussions to our
11 State's economy;

12 b. Workers who are improperly classified suffer an economic
13 disadvantage and are involuntary disenfranchised from the social
14 insurance benefits and basic worker protections provided to
15 individuals classified as employees, including unemployment and
16 disability insurance, Social Security wage credits, and employee
17 health and pension benefits offered by the employer to its
18 workforce;

19 c. Employers who willfully misclassify workers as independent
20 contractors realize an unfair competitive advantage over employers
21 who properly identify their workers as employees;

22 d. Evidence indicates that misclassification rates throughout
23 the country are disproportionately higher in the construction
24 industry compared to most other industries, a trend that is reflected
25 in New Jersey with a United States Department of Labor study
26 suggesting that 11.4 percent of New Jersey construction payroll
27 workers were misclassified as independent contractors in 2014;

28 e. The State has undertaken significant efforts to address this
29 problem, including the enactment of the "Construction Industry
30 Independent Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.),
31 which sets standards for making the determination of an employee
32 in the construction industry with respect to certain labor and tax
33 laws, and also specifies penalties and employee rights; and

34 f. The State's efforts to address the problem of employee
35 misclassification in the construction industry and to ensure
36 contractor compliance with the "Construction Industry Independent
37 Contractor Act" will be enhanced through the creation of an
38 advisory body comprised of government officials and private sector
39 representatives with expertise in this subject.

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41 2. There is established in the Department of Labor and
42 Workforce Development the New Jersey Commission on
43 Construction Industry Independent Contractor Reform. The
44 purpose of the commission is to develop recommendations for a
45 comprehensive and strategic Statewide approach to addressing the
46 problem of employee misclassification in the construction industry
47 and to ensure contractor compliance with the "Construction
48 Industry Independent Contractor Act" and any other applicable law

- 1 regarding employee misclassification. To fulfill the purpose of the
2 commission, the commission shall be authorized to:
- 3 a. make recommendations to the Department of Labor and
4 Workforce Development, the Office of the Attorney General, and the
5 Department of the Treasury with respect to synchronizing each
6 respective department's regulations and policies regarding employee
7 misclassification;
- 8 b. conduct public hearings to increase public awareness of the
9 illegal nature and harms inflicted by employee misclassification in the
10 construction industry and to highlight potential significant cases of
11 misclassification that may warrant investigation by the appropriate
12 government agency;
- 13 c. make recommendations to enhance mechanisms for identifying
14 employee misclassification in the construction industry;
- 15 d. work with business, labor and community groups associated
16 with the construction industry to develop educational materials to
17 provide clear guidance regarding the difference between an
18 independent contractor and an employee; and
- 19 e. cooperate with State, federal and local social service agencies
20 to identify ways to provide assistance to vulnerable populations that
21 have been exploited by employee misclassification in the construction
22 industry, including, but not limited to, immigrant workers.
- 23
- 24 3. a. The commission shall consist of thirteen voting members
25 as follows:
- 26 (1) the Commissioner of Labor and Workforce Development, or
27 a designee, who shall serve ex-officio;
- 28 (2) the Attorney General, or a designee, who shall serve ex-
29 officio;
- 30 (3) the State Treasurer, or a designee, who shall serve ex-
31 officio;
- 32 (4) one member of the Senate, to be appointed by the President of
33 the Senate; and one member of the General Assembly, to be appointed
34 by the Speaker of the General Assembly;
- 35 (5) two public members who shall be appointed by the President
36 of the Senate and who shall include one representative of residential
37 developers and one representative of commercial developers;
- 38 (6) two public members who shall be appointed by the Speaker
39 of the General Assembly and who shall include one representative
40 of residential construction contractors and one representative of
41 commercial construction contractors; and
- 42 (7) four public members who shall be appointed by the
43 Governor and who shall include representatives from three different
44 building trades unions and one representative of the New Jersey
45 AFL-CIO.
- 46 b. The Commissioner of Labor and Workforce Development or
47 the commissioner's designee shall serve as chairperson of the
48 commission. The commission shall organize as soon as practicable
49 following the appointment of its members and shall select a vice-

1 chairperson from among the members. The chairperson shall
2 appoint a secretary who need not be a member of the commission.

3 c. The presence of seven members of the commission shall
4 constitute a quorum. The commission may conduct business
5 without a quorum, but may only vote on recommendations when a
6 quorum is present.

7 d. The public members shall serve without compensation, but
8 shall be reimbursed for expenses actually incurred in the
9 performance of their duties, except that no funds shall be
10 appropriated or allocated to the commission.

11 e. The commission shall be entitled to call to its assistance and
12 avail itself of the services of the employees of any State department,
13 board, bureau, commission or agency it may require and as may be
14 available to it for its purposes.

15 f. The commission may meet and hold hearings at the places it
16 designates during the sessions or recesses of the Legislature.

17 g. The Department of Labor and Workforce Development shall
18 provide staff support to the commission.

19 h. Vacancies in the membership of the commission shall be
20 filled in the same manner provided for the original appointments.

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22 4. The commission shall report its findings and
23 recommendations to the Governor and Legislature pursuant to
24 section 2 of P.L.1991, c.164 (C.52:14-19.1) no later than 18 months
25 after the date of organization of the commission. The findings and
26 recommendations shall include, but not be limited to, information
27 on the status of the implementation of the "Construction Industry
28 Independent Contractor Act" and of any publicly available
29 information regarding the enforcement of that act, such as: cases
30 filed; wages and taxes recovered on behalf of the State; outcomes of
31 cases; legal or administrative barriers to successful implementation;
32 a review of the process used to adjudicate misclassification cases;
33 and proposals for any additional legislative action that may be
34 needed to enhance the State's efforts to address employee
35 misclassification in the construction industry.

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37 5. This act shall take effect immediately and shall expire upon
38 the submission of the commission's report.

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41 STATEMENT

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43 This bill establishes the New Jersey Commission on
44 Construction Industry Independent Contractor Reform within the
45 Department of Labor and Workforce Development. The purpose of
46 the commission is to develop recommendations for a
47 comprehensive and strategic Statewide approach to addressing the
48 problem of employee misclassification in the construction industry
49 and to ensure contractor compliance with the "Construction

1 Industry Independent Contractor Act,” P.L.2007, c.114 (C.34:20-1
2 et seq.), and any other applicable law regarding employee
3 misclassification. To fulfill its purpose, the commission is
4 authorized to: make recommendations to the Department of Labor
5 and Workforce Development, the Office of the Attorney General, and
6 the Department of the Treasury with respect to synchronizing each
7 respective department’s regulations and policies regarding employee
8 misclassification; conduct public hearings to increase public awareness
9 of the illegal nature and harms inflicted by employee misclassification
10 in the construction industry and to highlight potential significant cases
11 of misclassification that may warrant investigation by the appropriate
12 government agency; make recommendations to enhance mechanisms
13 for identifying employee misclassification in the construction industry;
14 work with business, labor and community groups associated with the
15 construction industry to develop educational materials to provide clear
16 guidance regarding the difference between an independent contractor
17 and an employee; and cooperate with State, federal and local social
18 service agencies to identify ways to provide assistance to vulnerable
19 populations that have been exploited by employee misclassification in
20 the construction industry.

21 Under the bill, the commission is required to consist of thirteen
22 voting members as follows:

23 (1) three ex-officio members, or their designees, that include the
24 Commissioner of Labor and Workforce Development, the Attorney
25 General, and the State Treasurer;

26 (2) one member of the Senate, to be appointed by the President of
27 the Senate; and one member of the General Assembly, to be appointed
28 by the Speaker of the General Assembly;

29 (3) two public members who shall be appointed by the President
30 of the Senate and who shall include one representative of residential
31 developers and one representative of commercial developers;

32 (4) two public members who shall be appointed by the Speaker
33 of the General Assembly and who shall include one representative
34 of residential construction contractors and one representative of
35 commercial construction contractors; and

36 (5) four public members who shall be appointed by the
37 Governor and who shall include representatives from three different
38 building trades unions and one representative of the New Jersey FL-
39 CIO.

40 The commission must report its findings and recommendations
41 to the Governor and Legislature no later than 18 months after the
42 date of organization of the commission. The findings and
43 recommendations must include, but are not be limited to,
44 information on the status of the implementation of the
45 “Construction Industry Independent Contractor Act” and of any
46 publicly available information regarding the enforcement of that
47 act.