

[First Reprint]

SENATE, No. 2758

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

SYNOPSIS

Establishes minimum wage requirements for certain long-term care facility staff; establishes direct care ratio requirements for nursing homes.

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens Committee on August 25, 2020, with amendments.



(Sponsorship Updated As Of: 8/25/2020)

1 **AN ACT** concerning long-term care facilities, amending P.L.1966,
2 c.113, and supplementing Title 30 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to
8 read as follows:

9 2. As used in this act:

10 (a) "Commissioner" means the Commissioner of Labor and
11 Workforce Development.

12 (b) "Director" means the director in charge of the bureau
13 referred to in section 3 of this act.

14 (c) "Wage board" means a board created as provided in section
15 10 of this act.

16 (d) "Wages" means any moneys due an employee from an
17 employer for services rendered or made available by the employee
18 to the employer as a result of their employment relationship
19 including commissions, bonus and piecework compensation and
20 including the fair value of any food or lodgings supplied by an
21 employer to an employee, and, until December 31, 2018, "wages"
22 includes any gratuities received by an employee for services
23 rendered for an employer or a customer of an employer. The
24 commissioner may, by regulation, establish the average value of
25 gratuities received by an employee in any occupation and the fair
26 value of food and lodging provided to employees in any occupation,
27 which average values shall be acceptable for the purposes of
28 determining compliance with this act in the absence of evidence of
29 the actual value of such items.

30 (e) "Regular hourly wage" means the amount that an employee
31 is regularly paid for each hour of work as determined by dividing
32 the total hours of work during the week into the employee's total
33 earnings for the week, exclusive of overtime premium pay.

34 (f) "Employ" includes to suffer or to permit to work.

35 (g) "Employer" includes any individual, partnership,
36 association, corporation, and the State and any county,
37 municipality, or school district in the State, or any agency,
38 authority, department, bureau, or instrumentality thereof, or any
39 person or group of persons acting directly or indirectly in the
40 interest of an employer in relation to an employee.

41 (h) "Employee" includes any individual employed by an
42 employer.

43 (i) "Occupation" means any occupation, service, trade,
44 business, industry or branch or group of industries or employment
45 or class of employment in which employees are gainfully employed.

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 SHH committee amendments adopted August 25, 2020.

1 (j) "Minimum fair wage order" means a wage order
2 promulgated pursuant to this act.

3 (k) "Fair wage" means a wage fairly and reasonably
4 commensurate with the value of the service or class of service
5 rendered and sufficient to meet the minimum cost of living
6 necessary for health.

7 (l) "Oppressive and unreasonable wage" means a wage which is
8 both less than the fair and reasonable value of the service rendered
9 and less than sufficient to meet the minimum cost of living
10 necessary for health.

11 (m) "Limousine" means a motor vehicle used in the business of
12 carrying passengers for hire to provide prearranged passenger
13 transportation at a premium fare on a dedicated, nonscheduled,
14 charter basis that is not conducted on a regular route and with a
15 seating capacity in no event of more than 14 passengers, not
16 including the driver, provided, that such a motor vehicle shall not
17 have a seating capacity in excess of four passengers, not including
18 the driver, beyond the maximum passenger seating capacity of the
19 vehicle, not including the driver, at the time of manufacture.
20 "Limousine" shall not include taxicabs, hotel or airport shuttles and
21 buses, buses employed solely in transporting school children or
22 teachers to and from school, vehicles owned and operated directly
23 or indirectly by businesses engaged in the practice of mortuary
24 science when those vehicles are used exclusively for providing
25 transportation related to the provision of funeral services or vehicles
26 owned and operated without charge or remuneration by a business
27 entity for its own purposes.

28 (n) "Seasonal employment" means employment during a year by
29 an employer that is a seasonal employer ,or employment by a non-
30 profit or government entity of an individual who is not employed by
31 that employer outside of the period of that year commencing on
32 May 1 and ending September 30, or employment by a governmental
33 entity in a recreational program or service during the period
34 commencing on May 1 and ending September 30, except that
35 "seasonal employment" does not include employment of employees
36 engaged to labor on a farm on either a piece-rate or regular hourly
37 rate basis .

38 (o) "Seasonal employer" means an employer who exclusively
39 provides its services in a continuous period of not more than ten
40 weeks during the months of June, July, August, and September, or
41 an employer for which, during the immediately previous calendar
42 year, not less than two thirds of the employer's gross receipts were
43 received in a continuous period of not more than sixteen weeks or
44 for which not less than 75 percent of the wages paid by the
45 employer during the immediately preceding year were paid for work
46 performed during a single calendar quarter.

47 (p) "Small employer" means any employer who employed less
48 than six employees for every working day during each of a majority

1 of the calendar workweeks in the current calendar year and less than
2 six employees for every working day during not less than 48
3 calendar workweeks in the preceding calendar year, except that, if
4 the employer was newly established during the preceding calendar
5 year, the employer shall be regarded as a "small employer" if the
6 employer employed less than six employees for every working day
7 during all of the weeks of that year, and during a majority of the
8 calendar workweeks in the current calendar year, and, if the
9 employer is newly established during the current calendar year, the
10 employer shall be regarded as a "small employer" if the employer
11 employed less than six employees for every working day during a
12 majority of the calendar workweeks in the current calendar year.

13 (q) "Long-term care facility direct care staff member" means
14 any health care professional licensed or certified pursuant to Title
15 26 or Title 45 of the Revised Statutes who is employed by a long-
16 term care facility and who provides personal care, assistance, or
17 treatment services directly to residents of the facility in the course
18 of the professional's regular duties.

19 (cf: P.L.2019, c.32, s.1)

20

21 2. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to
22 read as follows:

23 5. a. Except as provided in subsections c., d., e. **and** g., and i.
24 of this section, each employer shall pay to each of his employees
25 wages at a rate of not less than \$8.85 per hour as of January 1, 2019
26 and, on January 1 of 2020 and January 1 of each subsequent year, the
27 minimum wage shall be increased by any increase in the consumer
28 price index for all urban wage earners and clerical workers (CPI-W) as
29 calculated by the federal government for the 12 months prior to the
30 September 30 preceding that January 1, except that any of the
31 following rates shall apply if it exceeds the rate determined in
32 accordance with the applicable increase in the CPI-W for the indicated
33 year: on July 1, 2019, the minimum wage shall be \$10.00 per hour; on
34 January 1, 2020, the minimum wage shall be \$11.00 per hour; and on
35 January 1 of each year from 2021 to 2024, inclusive, the minimum
36 wage shall be increased from the rate of the preceding year by \$1.00
37 per hour. If the federal minimum hourly wage rate set by section 6 of
38 the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a
39 successor federal law, is raised to a level higher than the State
40 minimum wage rate set by this subsection, then the State minimum
41 wage rate shall be increased to the level of the federal minimum wage
42 rate and subsequent increases based on increases in the CPI-W
43 pursuant to this section shall be applied to the higher minimum wage
44 rate. If an applicable wage order has been issued by the commissioner
45 under section 17 (C.34:11-56a16) of this act, the employer shall also
46 pay not less than the wages prescribed in said order. The wage rates
47 fixed in this section shall not be applicable to part-time employees
48 primarily engaged in the care and tending of children in the home of

1 the employer, to persons under the age of 18 not possessing a special
2 vocational school graduate permit issued pursuant to section 15 of
3 P.L.1940, c.153 (C.34:2-21.15), or to persons employed as salesmen of
4 motor vehicles, or to persons employed as outside salesmen as such
5 terms shall be defined and delimited in regulations adopted by the
6 commissioner, or to persons employed in a volunteer capacity and
7 receiving only incidental benefits at a county or other agricultural fair
8 by a nonprofit or religious corporation or a nonprofit or religious
9 association which conducts or participates in that fair.

10 b. (1) An employer shall also pay each employee not less than 1
11 1/2 times such employee's regular hourly rate for each hour of working
12 time in excess of 40 hours in any week, except that this overtime rate
13 shall not apply: to any individual employed in a bona fide executive,
14 administrative, or professional capacity; or to employees engaged to
15 labor on a farm or employed in a hotel; or to an employee of a
16 common carrier of passengers by motor bus; or to a limousine driver
17 who is an employee of an employer engaged in the business of
18 operating limousines; or to employees engaged in labor relative to the
19 raising or care of livestock.

20 (2) Employees engaged on a piece-rate or regular hourly rate basis
21 to labor on a farm shall be paid for each day worked not less than the
22 applicable minimum hourly wage rate multiplied by the total number
23 of hours worked.

24 (3) Full-time students may be employed by the college or
25 university at which they are enrolled at not less than 85% of the
26 effective applicable minimum wage rate.

27 c. Employees of a small employer, and employees who are
28 engaged in seasonal employment, except for employees who
29 customarily and regularly receive gratuities or tips who shall be
30 subject to the provisions of subsections a. and d. of this section, shall
31 be paid \$8.85 per hour as of January 1, 2019 and, on January 1 of 2020
32 and January 1 of each subsequent year, that minimum wage rate shall
33 be increased by any increase in the consumer price index for all urban
34 wage earners and clerical workers (CPI-W) as calculated by the federal
35 government for the 12 months prior to the September 30 preceding
36 that January 1, except that any of the following rates shall apply if it
37 exceeds the rate determined in accordance with the applicable increase
38 in the CPI-W for the indicated year: on January 1, 2020, the minimum
39 wage shall be \$10.30 per hour; and on January 1 of each year from
40 2021 to 2025, inclusive, the minimum wage shall be increased from
41 the rate of the preceding year by eighty cents per hour, and, in 2026,
42 the minimum wage shall be increased from the rate of the preceding
43 year by seventy cents per hour, and, in each year from 2027 to 2028
44 inclusive, the minimum wage for employees subject to this subsection
45 c. shall be increased by the same amount as the increase for employees
46 subject to subsection a. of this section based on CPI-W increases, plus
47 one half of the difference between \$15.00 per hour and the minimum
48 wage in effect in 2026 for employees pursuant to subsection a. of this

1 section, so that, by 2028, the minimum wage for employees subject to
2 this subsection shall be the same as the minimum wage in effect for
3 employees subject to subsection a. of this section. If the federal
4 minimum hourly wage rate set by section 6 of the federal "Fair Labor
5 Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law,
6 is raised to a level higher than the State minimum wage rate set by this
7 subsection, then the State minimum wage rate shall be increased to the
8 level of the federal minimum wage rate and subsequent increases
9 based on increases in the CPI-W pursuant to this subsection shall be
10 applied to the higher minimum wage rate.

11 d. Employees engaged on a piece-rate or regular hourly rate basis
12 to labor on a farm shall be paid \$8.85 per hour as of January 1, 2019
13 and, on January 1 of 2020 and January 1 of each subsequent year, that
14 minimum wage rate shall be increased by any increase in the consumer
15 price index for all urban wage earners and clerical workers (CPI-W) as
16 calculated by the federal government for the 12 months prior to the
17 September 30 preceding that January 1, except that any of the
18 following rates shall apply if it exceeds the rate determined in
19 accordance with the applicable increase in the CPI-W for the indicated
20 year:

21 (1) on January 1, 2020, the minimum wage shall be \$10.30 per
22 hour; on January 1, 2022, the minimum wage shall be \$10.90 per hour;
23 and on January 1 of each year from 2023 to 2024, inclusive, the
24 minimum wage shall be increased from the rate of the preceding year
25 by eighty cents per hour; and

26 (2) subject to the provisions of paragraph (3) of this subsection d.,
27 minimum wage rates shall be increased as follows: on January 1 of
28 2025, the minimum wage shall be increased to \$13.40, and on January
29 1 of each year from 2026 to 2027, inclusive, the minimum wage shall
30 be increased from the rate of the preceding year by eighty cents per
31 hour, and, in each year from 2028 to 2030 inclusive, the minimum
32 wage for employees subject to this subsection d. shall be increased
33 during that year by the same amount as the increase in that year for
34 employees subject to subsection a. of this section based on CPI-W
35 increases, plus one third of the difference between \$15.00 per hour and
36 the minimum wage in effect in 2027 for employees pursuant to
37 subsection a. of this section, so that, by 2030, the minimum wage for
38 employees subject to this subsection shall be the same as the minimum
39 wage in effect for employees subject to subsection a. of this section.

40 (3) Not later than March 31, 2024, the commissioner and the
41 Secretary of Agriculture shall review the report issued by the
42 commissioner pursuant to subsection b. of section 4 of P.L.2019, c.32
43 (C.34:11-56a4.10) and shall consider any information provided by the
44 secretary regarding the impact on farm employers and the viability of
45 the State's agricultural industry of the increases of the minimum wage
46 made pursuant to paragraph (1) of this subsection, and the potential
47 impact of the increases which would be set by paragraph (2) of this
48 subsection, including comparisons with the wage rates in the

1 agricultural industries in other states, and shall recommend: approval
2 of the increases set forth in paragraph (2) of this subsection;
3 disapproval of the increases set forth in paragraph (2) of this
4 subsection; or an alternative manner of changing the minimum wage
5 after 2024 for employees engaged on a piece-rate or regular hourly
6 rate basis to labor on a farm. In contemplation of the possibility that
7 the commissioner and the secretary are unable to agree on the
8 recommendation required by this paragraph, by December 31, 2021,
9 the Governor shall appoint a public member subject to advice and
10 consent by the Senate, who will serve as a tie-breaking member if
11 needed. The increases set forth in paragraph (2) of this subsection shall
12 take effect unless there is a recommendation pursuant to this paragraph
13 to disapprove the increases or for an alternative manner of changing
14 the minimum wage after 2024 for employees engaged on a piece-rate
15 or regular hourly rate basis to labor on a farm and the Legislature, not
16 later than June 30, 2024, enacts a concurrent resolution approving the
17 implementation of that recommendation. Beginning in 2024, the
18 commissioner, secretary, and public member shall meet biennially to
19 make either a one or two year recommendation to the Legislature for
20 implementation by way of concurrent resolution.

21 (4) If the federal minimum hourly wage rate set by section 6 of the
22 federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a
23 successor federal law, is raised to a level higher than the State
24 minimum wage rate set by this subsection, then the State minimum
25 wage rate shall be increased to the level of the federal minimum wage
26 rate and subsequent increases based on increases in the CPI-W
27 pursuant to this subsection shall be applied to the higher minimum
28 wage rate.

29 e. With respect to an employee who customarily and regularly
30 receives gratuities or tips, every employer is entitled to a credit for the
31 gratuities or tips received by the employee against the hourly wage
32 rate that would otherwise be paid to the employee pursuant to
33 subsection a. of this section of the following amounts: after December
34 31, 2018 and before July 1, 2019, \$6.72 per hour; after June 30, 2019
35 and before January 1, 2020, \$7.37 per hour; during calendar years
36 2020, 2021 and 2022, \$7.87 per hour; during calendar year 2023,
37 \$8.87 per hour; and during calendar year 2024 and subsequent
38 calendar years, \$9.87 per hour.

39 f. Notwithstanding the provisions of this section to the contrary,
40 every trucking industry employer shall pay to all drivers, helpers,
41 loaders and mechanics for whom the Secretary of Transportation may
42 prescribe maximum hours of work for the safe operation of vehicles,
43 pursuant to section 31502(b) of the federal Motor Carrier Act, 49
44 U.S.C.s.31502(b), an overtime rate not less than 1 1/2 times the
45 minimum wage required pursuant to this section and N.J.A.C. 12:56-
46 3.1. Employees engaged in the trucking industry shall be paid no less
47 than the minimum wage rate as provided in this section and N.J.A.C.
48 12:56-3.1. As used in this section, "trucking industry employer"

1 means any business or establishment primarily operating for the
2 purpose of conveying property from one place to another by road or
3 highway, including the storage and warehousing of goods and
4 property. Such an employer shall also be subject to the jurisdiction of
5 the Secretary of Transportation pursuant to the federal Motor Carrier
6 Act, 49 U.S.C.s.31501 et seq., whose employees are exempt under
7 section 213(b)(1) of the federal "Fair Labor Standards Act of 1938,"
8 29 U.S.C. s.213(b)(1), which provides an exemption to employees
9 regulated by section 207 of the federal "Fair Labor Standards Act of
10 1938," 29 U.S.C. s.207, and the Interstate Commerce Act, 49 U.S.C.
11 s.501 et al.

12 g. Commencing on January 1, 2020, a training wage of not less
13 than 90 percent of the minimum wage rate otherwise set pursuant to
14 subsection a. of this section may be paid to an employee who is
15 enrolled in an established employer on-the-job or other training
16 program which meets standards set by regulations adopted by the
17 commissioner. The period during which an employer may pay the
18 training wage to the employee shall be the first 120 hours of work after
19 hiring the employee in employment in an occupation in which the
20 employee has no previous similar or related experience. An employer
21 shall not utilize any employee paid the training wage in a manner
22 which causes, induces, encourages or assists any displacement or
23 partial displacement of any currently employed worker, including any
24 previous recipient of the training wage, by reducing hours of a
25 currently employed worker, replacing a current or laid off employee
26 with a trainee, or by relocating operations resulting in a loss of
27 employment at a previous workplace, or in a manner which replaces,
28 supplants, competes with or duplicates any approved apprenticeship
29 program. An employer who pays an employee a training wage shall
30 make a good faith effort to continue to employ the employee after the
31 period of the training wage expires and shall not hire the employee at
32 the training wage unless there is a reasonable expectation that there
33 will be regular employment, paying at or above the effective minimum
34 wage, for the trainee upon the successful completion of the period of
35 the training wage. If the commissioner determines that an employer
36 has made repeated, knowing violations of the provisions of this
37 subsection regarding the payment of a training wage, the
38 commissioner shall suspend the employer's right to pay a training
39 wage for a period set pursuant to regulations adopted by the
40 commissioner, but not less than three years.

41 h. The provisions of this section shall not be construed as
42 prohibiting any political subdivision of the State from adopting an
43 ordinance, resolution, regulation or rule, or entering into any
44 agreement, establishing any standard for vendors, contractors and
45 subcontractors of the subdivision regarding wage rates or overtime
46 compensation which is higher than the standards provided for in this
47 section, and no provision of any other State or federal law establishing
48 a minimum standard regarding wages or other terms and conditions of

employment shall be construed as preventing a political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing a standard for vendors, contractors and subcontractors of the subdivision which is higher than the State or federal law or which otherwise provides greater protections or rights to employees of the vendors, contractors and subcontractors of the subdivision, unless the State or federal law expressly prohibits the subdivision from adopting the ordinance, resolution, regulation or rule, or entering into the agreement.

i. Effective on the first day of the second month next following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the minimum wage for long-term care facility direct care staff members shall be in an amount that is \$3 higher than the prevailing minimum wage established pursuant to subsection a. of this section ¹, which minimum wage rate shall be annually increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, plus any amount as is necessary to ensure that the minimum wage established pursuant to this subsection is \$3 higher than the prevailing minimum wage then in effect under subsection a. of this section ¹ .

(cf: P.L.2019, c.32, s.2)

3. (New section) a. The Commissioner of Human Services shall submit recommendations to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), for legislative approval of any reimbursement rate increases as may be needed to comply with minimum wage requirements for long-term care facility direct care staff as provided in subsection i. of section 5 of P.L.1966, c.113 (C.34:11-56a4). The commissioner may recommend that increases for nursing homes be tied to improvements in specific quality and safety metrics ¹, including, but not limited to:

(1) meeting nursing home staffing requirements; and
(2) implementing policies for improved communication between the nursing home and Managed Long Term Services and Supports and care managers ¹ .

b. No later than 90 days after the effective date of this act, the Commissioner of Human Services shall conduct a review of the Department of Human Services' Medicaid value-based payment strategy, including the Quality Incentive Payment Program, to ensure incentives provided under the strategy focus on priority metrics for quality improvement, and shall review and determine whether incentives are an effective means of driving improvements in quality of care and resident and staff safety in nursing homes.

c. (1) ¹ No later than 90 days after the effective date of this act, the ¹ The ¹ Commissioner of Human Services shall establish a direct care ¹ loss ¹ ratio reporting and rebate requirement ¹ , which shall take

1 effect no later than July 1, 2021¹, pursuant to which nursing homes
2 shall be required to report total revenues collected, along with the
3 portion of revenues that are expended on direct care staff wages, other
4 staff wages, 'taxes.'¹ administrative costs, investments in
5 improvements to the facility's equipment and physical plant, '[and]'¹
6 profits¹, and any other factors as the commissioner shall require¹.

7 (2) 'The direct care ratio shall require 90 percent, or such higher
8 percentage as the commissioner may establish by regulation, of a
9 facility's aggregate revenue in a fiscal year to be expended on the
10 direct care of residents.'¹ The commissioner shall determine '[the
11 maximum proportion of revenues that may be dedicated to] which
12 components of the reporting requirements shall be attributed to direct
13 patient care,¹ administrative costs ¹,¹ and profits. The commissioner
14 '[shall determine the exact ratio based on historical cost reports, and]'¹
15 may adjust the 'components of the'¹ ratio as appropriate based on
16 current financial information reported by nursing homes and overall
17 performance by the nursing home related to patient safety and quality
18 of care.

19 (3) The commissioner 'or an entity designated by the
20 commissioner'¹ may conduct an audit of the financial information
21 reported by nursing homes pursuant to this section to ensure the
22 accuracy of the information reported and compliance with the
23 requirements of this section, as well as to identify and recover any
24 payments that exceed the allowed cost ratio for administrative costs
25 and profits.

26 (4) In each case where the direct care loss ratio fails to
27 substantially comply with the ratio requirement established pursuant to
28 this subsection, the nursing home shall issue a pro rata dividend or
29 credit to 'the State and to'¹ all individuals and entities making
30 payments to the nursing home for resident services in an amount
31 sufficient to assure that the aggregate amount paid for direct care staff
32 wages, other staff wages, 'taxes.'¹ administrative costs, investments in
33 improvements to the nursing home's equipment and physical plant,
34 '[and]'¹ profits, 'and other factors.'¹ plus the amount of the dividends
35 and credits, equals the mandatory ratio for the previous calendar year.
36 The pro rata dividend or credit shall be equal to the percentage of
37 payments made by the payor to the nursing home in the previous
38 calendar year out of all payments made to the nursing home for
39 services provided in the previous calendar year from all payment
40 sources. All dividends and credits shall be distributed by '[December
41 31] June 30¹ of the year following the calendar year in which the ratio
42 requirements were not satisfied.

43
44 '4. The Commissioner of Human Services shall apply for such
45 State plan amendments or waivers as may be necessary to
46 implement the provisions of this act and to secure federal financial

1 participation for State Medicaid expenditures under the federal
2 Medicaid program.¹

3

4 ¹**[4.]5.**¹ This act shall take effect immediately.