

[Second Reprint]

ASSEMBLY, No. 1474

STATE OF NEW JERSEY
220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

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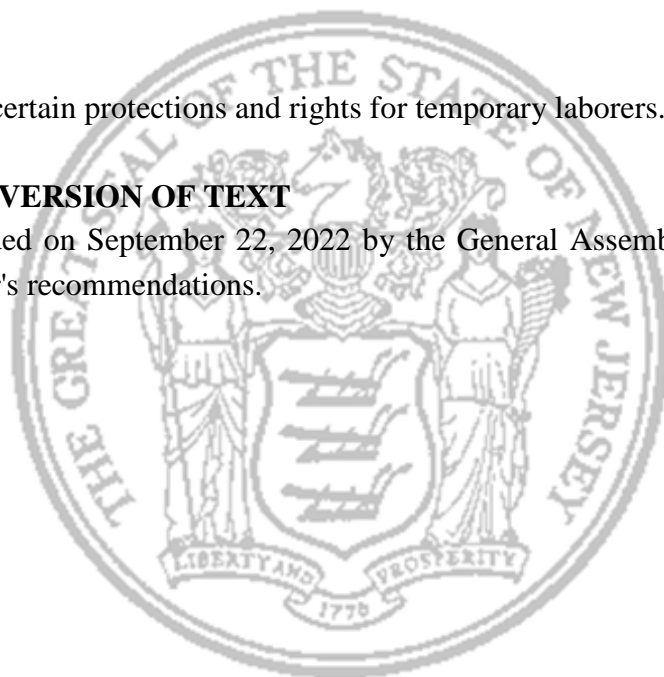
Assemblywoman Chaparro, Assemblyman Atkins, Assemblywomen Jasey, Reynolds-Jackson, Jaffer, Sumter, Assemblyman Wimberly, Assemblywomen McKnight, Speight, Senators Ruiz and Cruz-Perez

SYNOPSIS

Provides certain protections and rights for temporary laborers.

CURRENT VERSION OF TEXT

As amended on September 22, 2022 by the General Assembly pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 10/17/2022)

1 AN ACT concerning employment and protection of temporary
2 laborers, supplementing Title 34 of the Revised Statutes, and
3 amending P.L.1989, c.331.
4

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

7
8 1. (New section) The Legislature finds and declares:

9 a. At least 127,000 individuals work for temporary help service
10 firms, sometimes referred to as temp agencies or staffing agencies,
11 in New Jersey. Approximately 100 temporary help service firms
12 with several branch offices are licensed throughout the State.
13 Moreover, there are a large, though unknown, number of unlicensed
14 temporary help service firms that operate outside the purview of
15 law enforcement.

16 b. Recent national data indicate that the share of Black and
17 Latino temporary and staffing workers far outstrips their proportion
18 of the workforce in general. In addition to a heavy concentration in
19 service occupations, temporary laborers are heavily concentrated in
20 the production, transportation, and material moving occupations and
21 manufacturing industries. Further, full-time temporary help service
22 firm workers earn 41 percent less than workers in traditional work
23 arrangements, and these workers are far less likely than other
24 workers to receive employer-sponsored retirement and health
25 benefits.

26 c. Recent studies and a survey of low-wage temporary laborers
27 themselves find that, generally, these workers are particularly
28 vulnerable to abuse of their labor rights, including unpaid wages,
29 failure to pay for all hours worked, minimum wage and overtime
30 violations, unsafe working conditions, unlawful deductions from
31 pay for meals, transportation, equipment, and other items, as well as
32 discriminatory practices.

33 d. This act is intended to further protect the labor and
34 employment rights of these workers.
35

36 2. (New section) As used in P.L. , c. (C.) (pending
37 before the Legislature as this bill):

38 “Commissioner” means Commissioner of Labor and Workforce
39 Development, or a designee of the commissioner.

40 ¹“Director” means Director of the Division of Consumer Affairs
41 in the Department of Law and Public Safety ², or a designee of the
42 Director^{2, 1}.

43 “Employ” means to suffer or permit to work for compensation,
44 including by means of ongoing, contractual relationships in which

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 floor amendments adopted June 16, 2022.

²Assembly amendments adopted in accordance with Governor's recommendations September 22, 2022.

1 the employer retains substantial direct or indirect control over the
2 employee's employment opportunities or terms and conditions of
3 employment.

4 “Employer” means any person or corporation, partnership,
5 individual proprietorship, joint venture, firm, company, or other
6 similar legal entity who engages the services of an employee and
7 who pays the employee’s wages, salary, or other compensation, or
8 any person acting directly or indirectly in the interest of an
9 employer in relation to an employee.

10 “Hours worked” means all of the time that the employee is
11 required to be at the employee’s place of work or on duty. Nothing
12 in P.L. , c. (C.) (pending before the Legislature as this
13 bill) requires an employer to pay an employee for hours the
14 employee is not required to be at the employee’s place of work
15 because of holidays, vacation, lunch hours, illness, and similar
16 reasons. ²“Designated classification placement” means an
17 assignment of a temporary laborer by a temporary help service firm
18 to perform work in any of the following occupational categories as
19 designated by the Bureau of Labor Statistics of the United States
20 Department of Labor: 33-90000 Other Protective Service Workers;
21 35-0000 Food Preparation and Serving Related Occupations; 37-
22 0000 Building and Grounds Cleaning and Maintenance
23 Occupations; 39-0000 Personal Care and Service Occupations; 47-
24 2060 Construction Laborers; 47-30000 Helpers, Construction
25 Trades; 49-0000 Installation, Maintenance, and Repair Occupations;
26 51-0000 Production Occupations; 53-0000 Transportation and
27 Material Moving Occupations; or any successor categories as the
28 Bureau of Labor Statistics may designate.²

29 “Person” means any natural person or their legal representative,
30 partnership, corporation, company, trust, business entity, or
31 association, and any agent, employee, salesman, partner, officer,
32 director, member, stockholder, associate, trustee, or beneficiary of a
33 trust thereof.

34 “Temporary laborer” means a person who contracts for
35 employment ²in a designated classification placement² with a
36 temporary help service firm. ¹Temporary laborer does not include
37 agricultural crew leaders who are registered under the federal
38 Migrant and Seasonal Agricultural Worker Protection Act, 29
39 U.S.C. s.1801 et seq., P.L.1971, c.192 (C.34:8A-7 et seq.), or
40 P.L.1945, c.71 (C.34:9A-1 et seq.).¹

41 ²“Temporary labor applicant” means a person who requests a
42 job assignment through a temporary help service firm, whether in
43 the presence of the firm, in writing, or through an online application
44 process.

45 “Temporary labor” means work performed by a temporary
46 laborer at the business of, or for, a third party client of a temporary
47 help service firm, the duration of which may be specific or

1 undefined, pursuant to a contract or understanding between the
2 temporary help service firm and the third party client. ¹Temporary
3 labor does not include labor or employment of a professional
4 employee, as defined in 29 U.S.C. s.152; or to employees who are
5 secretaries or administrative assistants whose main or primary
6 duties are described by the bureau of labor statistics of the United
7 States Department of Labor as involving one or more of the
8 following: drafting or revising correspondence, scheduling
9 appointments, creating, organizing, and maintaining paper and
10 electronic files, and providing information to callers or visitors.¹²

11 “Temporary help service firm” means any person or entity who
12 operates a business which consists of employing individuals
13 directly or indirectly for the purpose of assigning the employed
14 individuals to assist the firm's customers in the handling of the
15 customers' temporary, excess or special work loads, and who, in
16 addition to the payment of wages or salaries to the employed
17 individuals, pays federal social security taxes and State and federal
18 unemployment insurance; carries workers' compensation insurance
19 as required by State law; and sustains responsibility for the actions
20 of the employed individuals while they render services to the firm's
21 customers. A temporary help service firm is required to comply
22 with the provisions of P.L.1960, c. 39 (C.56:8-1 et seq.).

23 “Third party client” means any person who contracts with a
24 temporary help service firm for obtaining temporary laborers ²in a
25 designated classification placement². ¹Third party client does not
26 include the State or any office, department, division, bureau, board,
27 commission, agency, or political subdivision thereof that utilize the
28 services of temporary help service firms.¹

29
30 3. (New section) a. Whenever a temporary help service firm
31 agrees to send a person to work as a temporary laborer ²in a
32 designated classification placement², the temporary help service
33 firm shall provide the temporary laborer, at the time of dispatch, a
34 statement, in writing in English and in the language identified by
35 the employee as the employee's primary language, containing the
36 following items on a form approved by the commissioner¹, in a
37 manner appropriate to whether the assignment is accepted at the
38 temporary help service firm's office, or remotely by telephone, text,
39 email, or other electronic exchange¹:

- 40 (1) the name of the temporary laborer;
41 (2) the name, address, and telephone number of:
42 (a) the temporary help service firm, or the contact information
43 of the firm's agent facilitating the placement;
44 (b) its workers' compensation carrier;
45 (c) the worksite employer or third party client; and
46 (d) the Department of Labor and Workforce Development;
47 (3) the name and nature of the work to be performed;

1 (4) the wages offered;

2 (5) the name and address of the assigned worksite of each
3 temporary laborer;

4 (6) the terms of transportation offered to the temporary laborer²,
5 if applicable²;

6 (7) a description of the position and whether it shall require any
7 special clothing, protective equipment, and training, and what
8 training and clothing will be provided by the temporary help service
9 firm or the third party client; and any licenses and any costs charged
10 to the employee for supplies or training;

11 (8) whether a meal or equipment, or both, are provided, either
12 by the temporary help service firm or the third party client, and the
13 cost of the meal and equipment, if any;

14 (9) for multi-day assignments, the schedule;

15 (10) the length of the assignment¹, if known¹; and

16 (11) the amount of sick leave to which temporary workers are
17 entitled under P.L.2018, c.10 (C.34:11D-1 et seq.), and the terms of
18 its use.

19 In the event of a change in the schedule, shift, or location of an
20 assignment for a multi-day assignment of a temporary laborer ²in a
21 designated classification placement², the temporary help service
22 firm shall provide ¹["written"]¹ notice of the change not less than 48
23 hours in advance to the temporary laborer, when possible¹, in a
24 manner appropriate to whether the assignment is accepted at the
25 temporary help service firm's office, or remotely by telephone, text,
26 email, or other electronic exchange¹. The temporary help service
27 firm shall bear the burden of showing that it was not possible to
28 provide the required notice. ²["If a dispute arises concerning
29 whether it was possible for a temporary help service firm to provide
30 the required notice, an aggrieved party shall make an application to
31 the commissioner, in a manner and form prescribed by the
32 commissioner, for a determination on the matter.¹"] In the event that
33 the commissioner imposes a civil penalty under subsection d. of this
34 section and the temporary help service firm requests a hearing to
35 challenge the penalty, any dispute concerning whether it was
36 possible for the temporary help service firm to provide the required
37 notice shall be adjudicated during that hearing.²

38 If a temporary laborer ²in a designated classification placement²
39 is assigned to the same assignment for more than one day, the
40 temporary help service firm shall be required to provide the
41 employment notice only on the first day of the assignment and on
42 any day that any of the terms listed on the employment notice are
43 changed.

44 If the temporary laborer is not placed with a third party client or
45 otherwise contracted to work for that day, the temporary help
46 service firm shall, upon request, provide the temporary laborer with
47 a confirmation that the temporary laborer sought work, signed by an

1 employee of the temporary help service firm, which shall include
2 the name of the firm, the name and address of the temporary
3 laborer, and the date and the time that the temporary laborer
4 receives the confirmation.

5 b. No temporary help service firm shall send any temporary
6 laborer to any ²place designated classification placement² where
7 a strike, a lockout, or other labor dispute exists without providing,
8 at the time of dispatch, a statement, in writing, informing the
9 temporary laborer of the labor dispute, and the laborer's right to
10 refuse the assignment.

11 c. ²The commissioner shall require temporary Temporary²
12 help service firms ²to employ that make designated classification
13 placements shall make available, whether through its own
14 employees or the service of a vendor,² personnel ²who can to²
15 effectively communicate the information required in subsections a.
16 and b. of this section to temporary laborers in Spanish or in any
17 other language that is generally understood in the locale of the
18 temporary help service firm.

19 d. Any temporary help service firm ²that makes designated
20 classification placements and² that violates this section shall be
21 subject to a civil penalty of not less than \$500 and not to exceed
22 \$1,000 for each violation found by the commissioner. That penalty
23 shall be collected by the commissioner in a summary proceeding in
24 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
25 c.274 (C.2A:58-10 et seq.).

26 e. The commissioner², in consultation with the Office of the
27 New Americans within the Department of Human Services,² shall
28 develop and implement a multilingual outreach program to inform
29 temporary laborers ²in a designated classification placement² about
30 their rights pursuant to P.L. , c. (C.) (pending before the
31 Legislature as this bill). The program shall ²develop written
32 materials in various languages based on the 10 most prevalent
33 language access needs in the State, and may periodically reevaluate
34 the language access needs and adjust translation efforts accordingly.
35 The program shall² include the distribution of written materials ²in
36 English, Spanish and any other language that is the primary
37 language of 10 percent or more of the registered voters in the State
38 to community-based organizations and worker centers] to
39 qualifying organizations² who work with temporary workers ²in a
40 designated classification placement², and ²shall engage in² regular
41 outreach to these organizations to determine how the commissioner
42 can better inform temporary laborers of their rights. ²For purposes
43 of this subsection, qualifying organizations are organizations that
44 have a minimum of five years of experience working with
45 temporary laborers or hiring entities, and organizations that work

- 1 with nonprofit organizations that have a minimum of five years of
2 experience working with temporary laborers or hiring entities.²
3
- 4 4. (New Section) a. Whenever a temporary help service firm
5 sends one or more persons to work as temporary laborers ²in
6 designated classification placements², the temporary help service
7 firm shall keep the following records relating to that transaction:
8 (1) the name, address, and telephone number of the third party
9 client, including each worksite, to which temporary laborers were
10 sent by the temporary help service firm and the date of the
11 transaction;
12 (2) for each temporary laborer: the name and address, the
13 specific location sent to work, the type of work performed, the
14 number of hours worked, the hourly rate of pay, and the date sent.
15 The third party client shall be required to remit all information
16 required under this paragraph to the temporary help service firm no
17 later than seven days following the last day of the work week
18 worked by the temporary laborer;
19 (3) the name and title of the individual or individuals at each
20 third party client's place of business responsible for the transaction;
21 (4) any specific qualifications or attributes of a temporary
22 laborer, requested by each third party client;
23 (5) copies of all contracts, if any, with the third party client and
24 copies of all invoices for the third party client;
25 (6) copies of all employment notices provided in accordance
26 with subsection a. of section 3 of P.L. , c. (C.) (pending
27 before the Legislature as this bill);
28 (7) the amounts of any deductions to be made from each
29 temporary laborer's compensation by either the third party client or
30 by the temporary help service firm for the temporary laborer's food,
31 equipment, withheld income tax, ²withheld contributions to the
32 state unemployment compensation trust fund and the state disability
33 benefits trust fund² withheld Social Security deductions, and every
34 other deduction;
35 (8) verification of the actual cost of any equipment or meal
36 charged to a temporary laborer; ¹and¹
37 (9) ¹**【**the race, ethnicity, and gender of each temporary laborer
38 or applicant, as provided by that laborer or applicant, who requests
39 employment with, or is contracted by, the temporary help service
40 firm. For each applicant, the temporary help service firm shall
41 provide the applicant with and retain a copy of a written notice
42 specifying the date, time, and location at which the applicant
43 requested employment, signed by an employee of the temporary
44 help service firm; and
45 (10)¹**】** any additional information required by the commissioner.
46 b. The temporary help service firm shall maintain all records
47 under this section for a period of six years from their creation. The

1 records shall be open to inspection by the commissioner during
2 normal business hours. Records described in paragraphs (1), (2),
3 (3), (6), (7), and (8) of subsection a. of this section shall be
4 available for review ²~~or~~ ²and² copying by that temporary laborer
5 ²at no cost² or an authorized representative of the temporary laborer
6 during normal business hours within five days following a written
7 request. ²For purposes of this subsection, an authorized
8 representative of the temporary laborer is a person as to whom the
9 temporary laborer has presented to the temporary help service firm
10 an authorization signed by the temporary laborer that expressly
11 permits the person to review and copy the subject records.²

12 In addition, a temporary help service firm ²that makes designated
13 classification placements² shall make records related to the number
14 of hours billed to a third party client for that individual temporary
15 laborer's hours of work available for review or copying ², at no
16 cost,² during normal business hours within five days following a
17 written request. The temporary help service firm shall make forms,
18 in duplicate, for those requests available ²at no cost² to temporary
19 laborers at the dispatch office. The temporary laborer shall be given
20 a copy of the request form. It shall be a violation of this section to
21 make any false, inaccurate, or incomplete entry into, or to delete
22 required information from, any record required by this section.

23 c. (1) Failure by the third party client to maintain and remit
24 accurate time records to the temporary help service firm as provided
25 in paragraph (2) of subsection a. of this section shall constitute a
26 violation by a third party client under section 11 of
27 P.L. , c. (C.) (pending before the Legislature as this bill),
28 unless the third party client has been precluded from submitting
29 those time records for reasons beyond its control. A third party
30 client that violates paragraph (2) of subsection a. of this section
31 shall be subject to a civil penalty not to exceed \$500 for each
32 violation found by the commissioner. The penalty shall be
33 collected in a summary proceeding in accordance with the "Penalty
34 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

35 (2) A failure by the third party client to provide time records in
36 accordance with subsection b. of this section shall not be a violation
37 and shall not be the basis for a suit or other action under section 11
38 of P.L. , c. (C.) (pending before the Legislature as this
39 bill), against the temporary help service firm.

40 (3) Failure of a third party client to remit any information
41 required by this section to a temporary help service firm shall not be
42 a defense to the temporary help service firm recordkeeping
43 requirements of this section.

44
45 5. (New section) a. A temporary help service firm or a third
46 party client, or a contractor or agent of either, shall charge no fee to

1 a temporary laborer ²in a designated classification placement² to
2 transport a temporary laborer to or from the designated work site.

3 b. A temporary help service firm shall be ²**[responsible]**
4 jointly and severally liable² for the conduct and performance of any
5 person who transports a temporary laborer ²in a designated
6 classification placement² from the firm to a work site, unless the
7 transporter is:

- 8 (1) a public mass transportation system;
- 9 (2) a common carrier;
- 10 (3) the temporary laborer providing his or her own
11 transportation; or
- 12 (4) selected exclusively by and at the sole choice of the
13 temporary laborer for transportation in a vehicle not owned or
14 operated by the temporary help service firm.

15 If any temporary help service firm provides transportation to a
16 temporary laborer ²in a designated classification placement² or
17 refers a temporary laborer ²in a designated classification placement²
18 as provided in subsection ²**[c.] d.**² of this section, the temporary
19 help service firm shall not allow a motor vehicle to be used for the
20 transporting of temporary laborers if the temporary help service
21 firm knows or should know that the motor vehicle used for the
22 transportation of temporary laborers is unsafe or not equipped as
23 required by P.L. , c. (C.) (pending before the Legislature as
24 this bill), unless the vehicle is:

- 25 (1) the property of a public mass transportation system;
- 26 (2) the property of a common carrier;
- 27 (3) the temporary laborer's personal vehicle; or
- 28 (4) a vehicle of a temporary laborer used to carpool other
29 temporary laborers and which is selected exclusively by and at the
30 sole choice of the temporary laborer for transportation.

31 ²c. A temporary help service firm shall not require a temporary
32 laborer in a designated classification placement to use
33 transportation provided by the firm or by another provider of
34 transportation services.²

35 ²**[c.]d.**² A temporary help service firm shall not refer a
36 temporary laborer ²in a designated classification placement² to any
37 person for transportation to a work site unless that person is:

- 38 (1) a public mass transportation system; or
- 39 (2) providing the transportation at no fee to the temporary
40 laborer.

41 Directing ²**[the]a**² temporary laborer ²in a designated
42 classification placement² to accept a specific car pool as a condition
43 of work shall be considered a referral by the temporary help service
44 firm. Any mention or discussion of the cost of a car pool shall be
45 considered a referral by the temporary help service firm. Informing
46 a temporary laborer ²in a designated classification placement² of the

1 availability of a car pool driven by another temporary laborer shall
2 not be considered a referral by the temporary help service firm.

3 The temporary help service firm shall obtain, and keep on file,
4 documentation that any provider of transportation to ²[the] a²
5 temporary laborer ²in a designated classification placement² that the
6 temporary help service firm makes referrals to or contracts with is
7 in compliance with the requirements of subsections ²[d., e., and f.]
8 e., f., and g.² of this section. ²The commissioner may randomly
9 audit a temporary help service firm to ensure that the firm is
10 maintaining the documentation required by this subsection.²

11 ²[d.] e.² Any motor vehicle that is owned or operated by ²[the]
12 a² temporary help service firm ²that makes designated classification
13 placements² or a third party client ²of such a firm², or a contractor
14 or agent of either, or to which a temporary help service firm refers a
15 temporary laborer ²in a designated classification², which is used for
16 the transportation of temporary laborers ²in a designated
17 classification placement² shall comply with minimum insurance
18 requirements set by the State of New Jersey. The driver of the
19 vehicle shall hold a valid license to operate motor vehicles in the
20 correct classification and shall be required to produce the license
21 immediately upon demand by the commissioner or any other person
22 authorized to enforce P.L. , c. (C.) (pending before the
23 Legislature as this bill). The commissioner shall forward a violation
24 of this subsection to the appropriate law enforcement authority or
25 regulatory agency.

26 ²[e.] f.² A motor vehicle that is owned or operated by the
27 temporary help service firm ²that makes designated classification
28 placements² or a third party client ²of such a firm², or a contractor
29 or agent of either, or to which a temporary help service firm refers a
30 temporary laborer ²in a designated classification placement², which
31 is used for the transportation of temporary laborers ²in a designated
32 classification placement² shall have a seat and a safety belt for each
33 passenger. The commissioner shall forward a violation of this
34 subsection to the appropriate law enforcement authority or
35 regulatory agency.

36 ²[f.] g.² Unless the temporary laborer ²in a designated
37 classification placement² requests otherwise, when a temporary
38 laborer ²in a designated classification placement² has been
39 transported to a work site, the temporary help service firm or a third
40 party client, or a contractor or agent of either, shall provide
41 transportation back to the point of hire at the end of each work day.

42 ²h. The obligations imposed by this section shall be in addition
43 to those set forth in subsection d. of section 14 of P.L.1981, c.1
44 (C.56:8-1.1) and any rules or regulations promulgated thereunder.

1 i. The commissioner may promulgate regulations under this
2 section in accordance with the “Administrative Procedure Act,”
3 P.L.1968, c.410 (C.52:14B-1 et seq.)

4 j. The commissioner may assess a penalty against a temporary
5 help service firm that violates this section or any rules or
6 regulations adopted pursuant to this section of up to \$5,000 for each
7 violation, except that the penalty for a violation of the
8 recordkeeping requirements of this section shall not exceed \$500
9 for each violation. Each day that a temporary help service firm fails
10 to comply with this section shall constitute a separate offense. Any
11 penalty assessed under this section shall be collected by the
12 commissioner in a summary proceeding in accordance with the
13 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10
14 et seq.).²

15
16 6. (New section) a. At the time of payment of wages, a
17 temporary help service firm shall provide each temporary laborer
18 ²in a designated classification placement² with a detailed itemized
19 statement, on the temporary laborer's paycheck stub or on a form
20 approved by the commissioner, listing the following:

21 (1) the name, address, and telephone number of each third party
22 client at which the temporary laborer worked. If this information is
23 provided on the temporary laborer's paycheck stub, a code for each
24 third party client may be used so long as the required information
25 for each coded third party client is made available to the temporary
26 laborer;

27 (2) the number of hours worked by the temporary laborer at each
28 third party client each day during the pay period. If the temporary
29 laborer is assigned to work at the same work site of the same third
30 party client for multiple days in the same work week, the temporary
31 help service firm may record a summary of hours worked at that
32 third party client's worksite so long as the first and last day of that
33 work week are identified as well;

34 (3) the rate of payment for each hour worked, including any
35 premium rate or bonus. Overtime pay shall be paid in accordance
36 with the provisions of subsection b. of section 5 of P.L.1966, c.113
37 (C.34:11-56a4);

38 (4) the total pay period earnings;

39 (5) the amount of each deduction made from the temporary
40 laborer's compensation made ²[either by the third party client or]²
41 by the temporary help service firm, and the purpose for which each
42 deduction was made, including for the temporary laborer's food,
43 equipment, withheld income tax, withheld Social Security
44 deductions, ²withheld contributions to the state unemployment
45 compensation trust fund and the state disability benefits trust fund,²
46 and every other deduction; the current maximum amount of a
47 placement fee which the temporary help service firm may charge to

1 a third party client to directly hire the temporary laborer pursuant to
2 subsection a. of section 7 of P.L. , c. (C.) (pending before
3 the Legislature as this bill); and

4 (6) any additional information required by the commissioner.

5 For each temporary laborer ²in a designated classification
6 placement² who is contracted to work a single day, the third party
7 client shall, at the end of the work day, provide such temporary
8 laborer with a work verification form, approved by the
9 commissioner, which shall contain the date, the temporary laborer's
10 name, the work location, and the hours worked on that day. Any
11 third party client who violates this section shall be subject to a civil
12 penalty not to exceed \$500 for each violation found by the
13 commissioner. The maximum civil penalty shall increase to \$2,500
14 for a second or subsequent violation. Each violation of paragraph 1
15 of this subsection for each temporary laborer and for each day the
16 violation continues shall constitute a separate and distinct violation.
17 That penalty shall be collected by the commissioner in a summary
18 proceeding in accordance with the "Penalty Enforcement Law of
19 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

20 b. ²A third party client shall not withhold or divert the wages
21 of a temporary laborer in a designated classification placement for
22 any reason. Except as otherwise authorized pursuant to this section,
23 a temporary help service firm shall not withhold or divert the wages
24 of a temporary laborer in a designated classification placement for
25 any reason.² A temporary help service firm shall provide each
26 temporary laborer ²with² an annual earnings summary within a
27 reasonable time after the preceding calendar year, but in no case
28 later than February 1 of each year. A temporary help service firm
29 shall, at the time of each wage payment, give notice to temporary
30 laborers ²in a designated classification placement² of the
31 availability of the annual earnings summary or post such a notice in
32 a conspicuous place in the public reception area.

33 c. At the request of a temporary laborer ²in a designated
34 classification placement², a temporary help service firm shall hold
35 the daily wages of the temporary laborer and make ²[either
36 weekly,]² bi-weekly²], or semi-monthly]² payments. The wages
37 shall be paid in a single check, or, at the temporary laborer's sole
38 option, by direct deposit or other manner approved by the
39 commissioner, representing the wages earned during the period²],
40 either weekly, bi-weekly, or semi-monthly, designated by the
41 temporary laborer]² in accordance with P.L.1965, c.173 (C.34:11-
42 4.1 et seq.).

43 Vouchers or any other method of payment which are not
44 negotiable shall be prohibited as a method of payment of wages.
45 Temporary help service firms that make daily wage payments shall
46 provide written notification to all temporary laborers ²in a
47 designated classification placement² of the right to request

1 ²[weekly,]² bi-weekly²[, or semi-monthly]² checks. The
 2 temporary help service firm may provide this notice by
 3 conspicuously posting the notice at the location where the wages
 4 are received by the temporary laborers.

5 d. No temporary help service firm shall charge any temporary
 6 laborer ²in a designated classification placement² for cashing a
 7 check issued by the temporary help service firm for wages earned
 8 by a temporary laborer who performed work through that temporary
 9 help service firm. No temporary help service firm or third party
 10 client shall charge any temporary laborer ²in a designated
 11 classification placement² for the expense of conducting any
 12 consumer report, as that term is defined in the “Fair Credit
 13 Reporting Act,” (15 U.S.C. s.1681 et seq.), any criminal
 14 background check of any kind, or any drug test of any kind.

15 e. Temporary laborers ²in a designated classification placement²
 16 shall be paid no less than the wage rate stated in the notice as
 17 provided in section 3 of P.L. , c. (C.) (pending before the
 18 Legislature as this bill), for all the work performed on behalf of the
 19 third party client in addition to the work listed in the written
 20 description.

21 f. ¹(1)¹The total amount deducted for meals and equipment shall
 22 not cause ²[a temporary laborer's] the² hourly wage ²of a
 23 temporary laborer in a designated classification placement² to fall
 24 below the State or federal minimum wage, whichever is greater.
 25 ¹[However, a]

26 (2) A¹ temporary help service firm may deduct the actual market
 27 value of reusable equipment provided to ²[the] a² temporary
 28 laborer ²in a designated classification placement² by the temporary
 29 help service firm which the temporary laborer fails to return, if the
 30 temporary laborer provides a written authorization for that
 31 deduction at the time the deduction is made. ¹For any additional
 32 equipment, clothing, accessories, or other items which are not
 33 required by the nature of the work, either by law, custom, or as a
 34 requirement of the third party client that ²[the] a² temporary help
 35 service firm makes available ²to temporary laborers in designated
 36 classification placements² for purchase, the temporary help service
 37 firm shall charge no more than actual market value.

38 (3) A temporary help service firm shall not charge ²a² temporary
 39 laborer ²in a designated classification placement² for any meal not
 40 consumed by the temporary laborer and, if consumed, no more than
 41 the actual cost of a meal. The purchase of a meal shall not be a
 42 condition of employment for a temporary laborer ²in a designated
 43 classification placement².¹

44 g. A temporary laborer who is contracted by a temporary help
 45 service firm to work at a third party client's worksite ²[but] in a
 46 designated classification placement but who² is not utilized by the

1 third party client² shall be paid by the temporary help service firm
2 for a minimum of four hours of pay at the agreed upon rate of pay.
3 However, in the event the temporary help service firm contracts the
4 temporary laborer to work at another location during the same shift,
5 the temporary laborer shall be paid by the temporary help service
6 firm for a minimum of two hours of pay at the agreed upon rate of
7 pay.

8 h. A third party client is required to reimburse a temporary help
9 service firm wages and related payroll taxes for services performed
10 for a third party client by the a temporary laborer for the
11 third party client in a designated classification placement
12 according to payment terms outlined on invoices, service
13 agreements, or stated terms provided by the temporary help service
14 firm. A third party client who fails to comply with this subsection is
15 subject to the penalties provided in section 11 of
16 P.L. , c. (C.) (pending before the Legislature as this bill).

17 The commissioner shall review a complaint filed by a
18 licensed temporary help service firm that makes designated
19 classification placements against a third party client. The
20 commissioner shall review the payroll and accounting records of the
21 temporary help service firm and the third party client for the period
22 in which the violation of P.L. , c. (C.) (pending before the
23 Legislature as this bill) is alleged to have occurred to determine if
24 wages and payroll taxes have been paid to the temporary help
25 service firm and that the temporary laborer has been paid the wages
26 owed.

27 i. Any temporary help service firm that violates this section
28 shall be subject to a civil penalty not to exceed \$500 for each
29 violation found by the commissioner. That penalty shall be
30 collected by the commissioner in a summary proceeding in
31 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
32 c.274 (C.2A:58-10 et seq.).

33
34 7. (New section) a. (1) No temporary help service firm shall
35 restrict the right of a temporary laborer in a designated
36 classification placement to accept a permanent position with a
37 third party client to whom the temporary laborer has been referred
38 for work, restrict the right of a third party client to offer
39 employment to a temporary laborer, or restrict the right of a
40 temporary laborer to accept a permanent position for any other
41 employment. A temporary help service firm may charge a
42 placement fee to a third party client for employing a temporary
43 laborer in a designated classification placement for whom a
44 contract for work was effected by the temporary help service firm
45 not to exceed the equivalent of the total daily commission rate the
46 temporary help service firm would have received over a 60-day
47 period, reduced by the equivalent of the daily commission rate the

1 temporary help service firm would have received for each day the
2 temporary laborer has performed work for the temporary help
3 service firm in the preceding 12 months.

4 (2) Any temporary help service firm which charges a placement
5 fee to a third party client for employing a temporary laborer ²in a
6 designated classification placement² shall include on the wage
7 payment and notice form of each affected temporary laborer the
8 maximum amount of a fee that shall be charged to a third party
9 client by the temporary help service firm, and the total amount of
10 actual charges to the third party client for the temporary laborer
11 during each pay period compared to the total compensation cost for
12 the temporary laborer, including costs of any benefits provided.
13 Failure to provide the required information shall constitute a
14 separate violation for each day the temporary help service firm fails
15 to provide the required information. No fee provided for under this
16 section shall be assessed or collected by the temporary help service
17 firm when ²[the] a² temporary laborer ²in a designated
18 classification placement² is offered permanent work following the
19 suspension ²[or],² revocation², or non-renewal² of the temporary
20 help service firm's ²[registration] certification² by the
21 ²[commissioner] director².

22 ²[b. Each year, at the time of registration with the commissioner
23 as required by section 8 of P.L. , c. (C.) (pending before
24 the Legislature as this bill), each temporary help service firm shall
25 submit to the commissioner, on a form created by the
26 commissioner, the number of temporary laborers the temporary help
27 service firm has placed in a permanent position with a third party
28 client in the preceding 12 months as well as the percentage those
29 permanent placements represent of the total number of temporary
30 laborers contracted by the temporary help service firm during the
31 same period. Each day that the temporary help service firm fails to
32 fully comply with the requirements of this subsection shall
33 constitute a separate notice violation.

34 c.] b.² Any temporary laborer assigned to work at a third party
35 client ²in a designated classification placement² shall not be paid
36 less than the ²[same]² average rate of pay and ²[equivalent]
37 average cost of² benefits ²[as a permanent employee], or the cash
38 equivalent thereof,² of ²employees of² the third party client
39 performing the same or substantially similar work on jobs the
40 performance of which requires equal skill, effort, and responsibility,
41 and which are performed under similar working conditions ²for the
42 third party client at the time the temporary laborer is assigned to
43 work at the third party client². Each violation of this subsection for
44 each affected temporary laborer shall constitute a separate violation
45 under section 11 of P.L. , c. (C.) (pending before the
46 Legislature as this bill).

1 ²[d.]²c.² Any temporary help service firm that violates this
2 section shall be subject to a civil penalty not to exceed ¹[\$500]
3 \$5,000¹ for each violation found by the commissioner. That penalty
4 shall be collected by the ¹[director] commissioner¹ in a summary
5 proceeding in accordance with the "Penalty Enforcement Law of
6 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

7 ²[¹e.]²d.² If a third party client leases or contracts with a
8 temporary help service firm for the services of a temporary laborer
9 in a designated classification requirement², the third party client
10 shall be, with the temporary help service firm, jointly and severally
11 responsible for any violation of this section, including with respect
12 to relief provided by section 11 of P.L. , c. (C.) (pending
13 before the Legislature as this bill) and civil penalties found by the
14 commissioner.¹

15
16 8. (New section) a. A temporary help service firm which is
17 located, operates, or transacts business within this State shall
18 ²[register with the commissioner] not make any designated
19 classification placements unless it is certified by the director to do
20 so.² in accordance with rules adopted by the ²[commissioner for
21 temporary help service firms] director² and shall be subject to
22 P.L. , c. (C.) (pending before the Legislature as this bill).
23 Each temporary help service firm ²seeking certification to make
24 designated classification placements² shall provide proof of an
25 employer account number issued by the commissioner for the
26 payment of unemployment insurance contributions as required
27 under the "unemployment compensation law," R.S.43:21-1 et seq.,
28 ²[and] ²proof of valid workers' compensation insurance in effect at
29 the time of ²[registration] certification² covering all of its
30 employees²; on a form created by the director, the number of
31 temporary laborers previously in designated classification
32 placements whom the temporary help service firm has placed in a
33 permanent position with a third party client in the preceding 12
34 months as well as the percentage those permanent placements
35 represent of the total number of temporary laborers in designated
36 classification placements contracted by the temporary help service
37 firm during the same period; and such other information as the
38 director may require pursuant to rules adopted under this section².
39 If, at any time, a ²[temporary help service firm's] the² workers'
40 compensation insurance coverage ²for a temporary help service firm
41 that makes designated classification placements² lapses, the
42 temporary help service firm shall have an affirmative duty to report
43 the lapse of coverage to the ²[commissioner] director² and the
44 temporary help service firm's ²[registration] certification² shall be
45 suspended until the firm's workers' compensation insurance is
46 reinstated. ²A temporary help service firm shall inform the director

1 of any change or addition to the information required under this
 2 subsection within 30 days of the change or addition.²

3 The ²**[commissioner]** director² shall assess each temporary help
 4 service firm ²seeking certification to make designated classification
 5 placements² a non-refundable ²**[registration]** certification² fee not
 6 exceeding \$2,000 per year per temporary help service firm and a
 7 non-refundable fee not to exceed \$750 ²per year² for each branch
 8 office or other location where the temporary help service firm
 9 regularly ²**[contracts]** conducts its business, including but not
 10 limited to contracting with and recruiting² with temporary laborers
 11 for ²designated classification placement² services. The fee shall be
 12 paid by check or money order, and the ²**[commissioner]** director²
 13 may not refuse to accept a check on the basis that it is not a certified
 14 check or a cashier's check. The ²**[commissioner]** director² may
 15 charge an additional fee to be paid by a temporary help service firm
 16 ²that makes designated classification placements² if the firm, or any
 17 person on the firm's behalf, issues or delivers a check to the
 18 ²**[commissioner]** director² that is not honored by the financial
 19 institution upon which it is drawn. The ²**[commissioner]** director²
 20 shall adopt rules for violation hearings and penalties for violations
 21 of P.L. , c. (C.) (pending before the Legislature as this
 22 bill). ²The director shall give the commissioner access to any
 23 information that the director receives pursuant to this section.²

24 ²**[At the time of registration with the commissioner each year, a**
 25 temporary help service firm shall provide the commissioner with a
 26 report containing the information identified in paragraph (9) of
 27 subsection a. of section 4 of P.L. , c. (C.) (pending before
 28 the Legislature as this bill), broken down by branch office, in the
 29 aggregate for all temporary laborers assigned within New Jersey in
 30 the prior year to be submitted on a form created by the
 31 commissioner.]²

32 b. It is a violation of P.L. , c. (C.) (pending before the
 33 Legislature as this bill) to operate a temporary help service firm
 34 ²that makes designated classification placements² without being
 35 ²**[registered with]** certified by² the ²**[commissioner]** director² in
 36 accordance with subsection a. of this section. The ²**[Commissioner**
 37 shall share a list of all registered temporary help service firms with
 38 the]² Division of Consumer Affairs in the Department of Law and
 39 Public Safety²**[, and the division]**² shall create and maintain on its
 40 Internet website, accessible to the public:

41 (1) a list of all ²**[registered]** certified² temporary help service
 42 firms in the State ²that make designated classification placements²
 43 whose ²**[registration]** certification² is in good standing;

44 (2) a list of temporary help service firms in the State ²that make
 45 designated classification placements² whose ²**[registration]**

1 certification² has been suspended, including the reason for the
2 suspension, the date that the suspension was initiated, and the date,
3 if known, that the suspension is to be lifted; and

4 (3) a list of temporary help service firms in the State that make
5 designated classification placements² whose ²**[registration]**
6 certification² has been revoked, including the reason for the
7 revocation and the date that the ²**[registration]** certification² was
8 revoked.

9 The ²**[commissioner]** director² shall assess a penalty against any
10 temporary help service firm that makes designated classification
11 placements and² that fails to ²**[register with the commissioner]**
12 obtain a certification from the director² in accordance with P.L. ,
13 c. (C.) (pending before the Legislature as this bill) or any
14 rules adopted under P.L. , c. (C.) (pending before the
15 Legislature as this bill) of ¹**[\$500]** \$5,000¹ for each violation. Each
16 day during which a person operates as a temporary help service firm
17 that makes designated classification placements² without being
18 ²**[registered]** certified² as a temporary help service firm with the
19 ²**[commissioner]** director pursuant to this section² shall be a
20 separate and distinct violation of P.L. , c. (C.) (pending
21 before the Legislature as this bill). That penalty shall be collected
22 by the ²**[commissioner]** director² in a summary proceeding in
23 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
24 c.274 (C.2A:58-10 et seq.).

25 A temporary help service firm that makes designated
26 classification placements² shall obtain a surety bond issued by a
27 surety company admitted to do business in this State. The principal
28 sum of the bond shall not be less than \$200,000. A copy of the bond
29 shall be filed with the ²**[commissioner]** director².

30 The bond required by this section shall be in favor of, and
31 payable to, the people of the State of New Jersey, and shall be for
32 the benefit of any temporary laborer damaged by the temporary help
33 service firm's failure to pay wages, interest on wages, or fringe
34 benefits, or damaged by violation of this section.

35 Thirty days prior to the cancellation or termination of any surety
36 bond required by this section, the surety shall send written notice to
37 both the temporary help service firm and the ²**[commissioner]**
38 director² identifying the bond and the date of the cancellation or
39 termination.

40 A temporary help service firm that makes designated
41 classification placements² shall not conduct any business until it
42 obtains a new surety bond and files a copy of it with the
43 ²**[commissioner]** director².

44 This subsection shall not apply to a temporary help service firm
45 whose temporary laborers are covered by a valid collective
46 bargaining agreement, if the agreement expressly provides for:

- 1 (1) Wages;
 - 2 (2) Hours of work;
 - 3 (3) Working conditions;
 - 4 (4) An expeditious process to resolve disputes concerning
 - 5 nonpayment of wages;
 - 6 (5) Documentation of its current workers' compensation
 - 7 insurance policy in effect for the temporary laborers; and
 - 8 (6) Compliance with all provisions of this section.
- 9 c. The principal executive officer of a temporary help service
- 10 firm ²that makes designated classification placements² shall certify
- 11 under oath at the time of ²**[registration]** certification² of the
- 12 temporary help service firm each year on a form created by the
- 13 ²**[commissioner]** director² that:
- 14 (1) the signing officer has reviewed the ²**[registration]**
 - 15 certification² form of the temporary help service firm and
 - 16 confirmed the information is true and accurate to the best of the
 - 17 officer's knowledge;
 - 18 (2) the signing officer has reviewed the recordkeeping practices
 - 19 of the temporary help service firm and confirmed that the
 - 20 recordkeeping practices comply with the requirements of section 4
 - 21 of P.L. , c. (C.) (pending before the Legislature as this bill)
 - 22 to the best of his or her knowledge;
 - 23 (3) the signing officer has reviewed the temporary help service
 - 24 firm's filing as required by subsection ²**[b.]a.**² of section ²**[7]**²**8**²
 - 25 P.L. , c. (C.) (pending before the Legislature as this bill),
 - 26 related to the placement of temporary laborers in permanent
 - 27 positions with third party clients and has confirmed that those
 - 28 practices comply with the requirements of section 7 of
 - 29 P.L. , c. (C.) (pending before the Legislature as this bill)
 - 30 ²and section 14 of P.L.1981, c.1 (C.56:8-1.1).² to the best of the
 - 31 officer's knowledge;
 - 32 (4) the signing officer has reviewed the temporary help service
 - 33 firm's practices related to the transportation of temporary laborers
 - 34 and has confirmed that those practices comply with the
 - 35 requirements of section 5 of P.L. , c. (C.) (pending before
 - 36 the Legislature as this bill) to the best of the officer's knowledge;
 - 37 (5) the signing officer has reviewed and is responsible for the
 - 38 surety bond posted by the temporary help service firm and its
 - 39 renewals; and
 - 40 (6) the signing officer:
 - 41 (a) is responsible for establishing and maintaining internal
 - 42 controls to comply with the recordkeeping requirements; and
 - 43 (b) has evaluated the effectiveness of the internal controls.
- 44 d. An applicant is not eligible to ²**[register]** obtain or renew a
- 45 certification² to operate a temporary help service firm ²that makes
- 46 designated classification placements² under P.L. , c. (C.)
- 47 (pending before the Legislature as this bill) if the applicant or any

1 of its officers, directors, partners, or managers or any owner having
2 25 percent or greater beneficial interest:

3 (1) has been involved, as owner, officer, director, partner, or
4 manager, of a temporary help service firm the registration ²or
5 certification² of which has been revoked or suspended without
6 being reinstated within the five years immediately preceding the
7 filing of the application; or (2) is under the age of 18.

8 e. Every temporary help service firm ²that makes designated
9 classification placements² shall post and keep posted at each
10 location, in a position easily accessible to all employees, notices as
11 supplied and required by the commissioner containing a copy or
12 summary of the provisions of P.L. , c. (C.) (pending before
13 the Legislature as this bill), and a notice which informs the public
14 of a toll-free telephone number operated by the commissioner for
15 temporary laborers ²in designated classification placements² and the
16 public to file wage dispute complaints and other alleged violations
17 by temporary help service firms ²that make designated
18 classification placements². The notices shall be in English or any
19 other language generally understood in the locale of the temporary
20 help service firm.

21 f. No temporary help service firm shall be permitted to
22 ²[register] obtain or renew a certification² to ²[operate] make
23 designated classification placements² in New Jersey until it has
24 complied with the requirements of this section.

25 ²g. Notwithstanding any law, rule, or regulation to the contrary,
26 any person or entity that meets the definition of temporary help
27 service firm and that makes designated classification placements as
28 those terms are defined in section 2 of P.L. , c. (C.)
29 (pending before the Legislature as this bill), shall obtain a
30 certification pursuant to this section and otherwise comply with the
31 provisions of P.L. , c. (C.) (pending before the Legislature
32 as this bill), regardless of whether the person or entity is licensed or
33 registered as one or more of the entities identified in section 1 of
34 P.L.1989, c.331 (C.34:8-43).

35 h. The requirements of this section shall be in addition to those
36 imposed by any other applicable law, rule, or regulation, including
37 section 14 of P.L.1981, c.1 (C.56:8-1.1) and any rules or regulations
38 promulgated thereunder. A temporary help service firm shall not
39 receive a certification under this section unless it is either registered
40 as a temporary help service firm pursuant to section 14 of P.L.1981,
41 c.1 (C.56:8-1.1) and any rules or regulations promulgated
42 thereunder, or licensed or registered as an entity authorized by any
43 other law, rule, or regulation to provide temporary help services.²
44

45 9. (New section) ¹[a.]¹ It is a violation of P.L. ,
46 c. (C.) (pending before the Legislature as this bill) for a third
47 party client to enter into a contract ²with a temporary help service

1 firm not certified under section 8 of P.L. , c. (C.) (pending
 2 before the Legislature as this bill),² for the ²**[employment]**
 3 assignment² of a temporary laborer ²**[with a temporary help service**
 4 firm not registered under section 8 of P.L. , c. (C.)
 5 (pending before the Legislature as this bill)] to a designated
 6 classification placement². A third party client shall verify a
 7 temporary help service firm's status with the ²**[commissioner]**
 8 director² before entering into a contract with the temporary help
 9 service firm ²for the assignment of a temporary laborer to a
 10 designated classification placement², and on March 1 and
 11 September 1 of each year.

12 A temporary help service firm shall provide each of its third
 13 party clients with proof of valid ²**[registration] certification²** issued
 14 by the ²**[commissioner] director²** at the time of entering into a
 15 contract ²for the assignment of a temporary laborer to a designated
 16 classification placement². A temporary help service firm shall be
 17 required to notify, both by telephone and in writing, each temporary
 18 laborer it ²**[employs] assigns to a designated classification**
 19 placement² and each third party client with whom it has a contract
 20 ²for the assignment of a temporary laborer to a designated
 21 classification placement² within 24 hours of any denial, suspension,
 22 ²**[or] ,² revocation², or non-renewal² of its ²**[registration]****
 23 certification² by the ²**[commissioner] director². All contracts**
 24 between any temporary help service firm and any third party client
 25 ²for the assignment of a temporary laborer to a designated
 26 classification placement² shall be considered null and void from the
 27 date any denial, suspension, ²**[or]**,² revocation², or non-renewal² of
 28 ²**[registration] certification² becomes effective and until such time**
 29 as the temporary help service firm becomes ²**[registered] certified²**
 30 and considered in good standing by the ²**[commissioner] director²**
 31 as provided in section 8 of P.L. , c. (C.) (pending before
 32 the Legislature as this bill).

33 Upon request, the ²**[commissioner] director²** shall provide to a
 34 third party client a list of entities ²**[registered] certified²** as
 35 temporary help service firms ²pursuant to section 8 of P.L. ,
 36 c. (C.) (pending before the Legislature as this bill)². ²**[The**
 37 commissioner shall share a list of all registered temporary help
 38 service firms with the Division of Consumer Affairs, and the
 39 division shall provide on its Internet website a list of entities
 40 registered as temporary help service firms.]² A third party client
 41 may rely on information provided by the ²**[commissioner] director²**
 42 or maintained on the ²**[division's] Division of Consumer Affairs²**
 43 website pursuant to section 8 of P.L. , c. (C.) (pending
 44 before the Legislature as this bill), and shall be held harmless if
 45 such information maintained or provided by the ²**[commissioner]**

1 director² or the division was inaccurate. Any third party client that
 2 violates this section shall be subject to a civil penalty not to exceed
 3 \$500. Each day during which a third party client contracts with a
 4 person operating as a temporary help service firm but not
 5 ²**[registered]** certified² as a temporary help service firm under
 6 section 8 of P.L. , c. (C.) (pending before the Legislature
 7 as this bill), shall constitute a separate and distinct offense.

8 ¹**[b.** If a third party client leases or contracts with a temporary
 9 help service firm for the services of a temporary laborer, the third
 10 party client shall be, with the temporary help service firm, jointly
 11 and severally responsible for:

12 (1) the payment of wages under the “New Jersey State Wage and
 13 Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.), P.L.1965, c.173
 14 (C.34:11-4.1 et seq.), R.S.34:11-57, and P.L.1952, c.9 (C.34:11-
 15 56.1 et seq.); and

16 (2) any violation of P.L. , c. (C.) (pending before the
 17 Legislature as this bill).¹

18
 19 10. (New section) a. It is a violation of P.L....., c....(C.)
 20 (pending before the Legislature as this bill) for a temporary help
 21 service firm or third party client, or any agent of a temporary help
 22 service firm or third party client, to retaliate through discharge or in
 23 any other manner against any temporary laborer ²in a designated
 24 classification placement² for exercising any rights granted under
 25 P.L. , c. (C.) (pending before the Legislature as this bill). The
 26 termination or disciplinary action by a temporary help service firm
 27 against a temporary laborer ²in a designated classification
 28 placement² within 90 days of the person's exercise of rights
 29 protected under P.L. , c. (C.) (pending before the Legislature
 30 as this bill) shall raise a rebuttable presumption of having done so
 31 in retaliation for the exercise of those rights. Such retaliation shall
 32 subject a temporary help service firm or third party client, or both,
 33 to civil penalties pursuant to P.L. , c. (C.) (pending before
 34 the Legislature as this bill) or a private cause of action.

35 b. It is a violation of P.L. , c. (C.) (pending before the
 36 Legislature as this bill) for a temporary help service firm or third
 37 party client to retaliate against a temporary laborer ²in a designated
 38 classification placement² for:

39 (1) making a complaint to a temporary help service firm, to a
 40 third party client, to a co-worker, to a community organization,
 41 before a public hearing, or to a State or federal agency that rights
 42 guaranteed under P.L. , c. (C.) (pending before the Legislature
 43 as this bill) have been violated;

44 (2) instituting any proceeding under or related to
 45 P.L. , c. (C.) (pending before the Legislature as this bill);
 46 or

1 (3) testifying or preparing to testify in an investigation or
2 proceeding under P.L. , c. (C.) (pending before the
3 Legislature as this bill).

4 c. When the commissioner finds that a temporary help service
5 firm or third party client has violated this section, the commissioner
6 is authorized to assess and collect administrative penalties, up to a
7 maximum of \$250 for a first violation and up to a maximum of
8 \$500 for each subsequent violation, specified in a schedule of
9 penalties to be promulgated as a rule or regulation by the
10 commissioner in accordance with the "Administrative Procedure
11 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the
12 amount of the penalty imposed because of a violation, the
13 commissioner shall consider factors which include the history of
14 previous violations by the employer, the seriousness of the
15 violation, the good faith of the employer and the size of the
16 employer's business. No administrative penalty shall be levied
17 pursuant to this section unless the commissioner provides the
18 alleged violator with notification of the violation and of the amount
19 of the penalty by certified mail and an opportunity to request a
20 hearing before the commissioner or his designee within 15 days
21 following the receipt of the notice. If a hearing is requested, the
22 commissioner shall issue a final order upon such hearing and a
23 finding that a violation has occurred. If no hearing is requested, the
24 notice shall become a final order upon expiration of the 15-day
25 period. Payment of the penalty is due when a final order is issued
26 or when the notice becomes a final order. Any penalty imposed
27 pursuant to this section may be recovered with costs in a summary
28 proceeding commenced by the commissioner pursuant to "the
29 penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Any sum
30 collected as a fine or penalty pursuant to this section shall be
31 applied toward enforcement and administration costs of the
32 Department of Labor and Workforce Development.

33
34 11. (New section) a. A person aggrieved by a violation of
35 P.L. , c. (C.) (pending before the Legislature as this bill) by
36 a temporary help service firm or a third party client may institute a
37 civil action in the Superior Court, in the county where the alleged
38 offense occurred or where any temporary laborer who is party to the
39 action resides, without regard to exhaustion of any alternative
40 administrative remedies provided in P.L. , c. (C.) (pending
41 before the Legislature as this bill).

42 A temporary help service firm aggrieved by a violation of
43 P.L. , c. (C.) (pending before the Legislature as this bill) by
44 a third party client may institute a civil action in the Superior Court,
45 in the county where the alleged offense occurred or where the
46 temporary help service firm which is party to the action is located.

47 An action may be brought by one or more temporary laborers
48 employed by the temporary help service firm for and on behalf of

1 themselves and other temporary laborers similarly situated against
2 the temporary help service firm or a third party client.

3 Notwithstanding any other relief provided under any other
4 provision of law, a temporary laborer whose rights have been
5 violated under P.L. , c. (C.) (pending before the
6 Legislature as this bill) by a temporary help service firm or a third
7 party client or a temporary help service firm whose rights have been
8 violated under P.L. , c. (C.) (pending before the
9 Legislature as this bill) by a third party client is entitled to the
10 following relief:

11 (1) in the case of any violation of subsection a. of section 7 of
12 P.L. , c. (C.) (pending before the Legislature as this bill)
13 relating to any unlawful restrictions by a temporary help service
14 firm on the right of a temporary laborer to accept a permanent
15 position for any other employment or the right of a third party client
16 to offer such employment to a temporary laborer, \$50 for each
17 temporary laborer affected by the temporary help service firm 's
18 policy, practice, or agreement and for each day that policy, practice,
19 or agreement is in effect, plus actual damages;

20 (2) in the case of unlawful retaliation, the greater of all legal or
21 equitable relief as may be appropriate or liquidated damages equal
22 to \$20,000 per incident of retaliation, at the selection of the
23 aggrieved temporary laborer, and reinstatement, if appropriate; and

24 (3) attorney's fees and costs.

25 b. The right of an aggrieved person to bring an action under
26 this section terminates upon the passing of six years from the final
27 date of employment by the temporary help service firm or the third
28 party client or upon the passing of six years from the date of
29 termination of the contract between the temporary help service firm
30 and the third party client.

31

32 12. (New section) a. The ²**[commissioner]** director² shall have
33 the authority to deny, ²suspend,² revoke, or refuse to renew any
34 ²**[registration]** certification² issued under section 8 of P.L. ,
35 c. (C.) (pending before the Legislature as this bill).

36 b. The ²**[commissioner]** director² shall notify a temporary help
37 service firm in writing by mail of the denial, ²suspension
38 of,² revocation of, or refusal to renew the ²**[registration]**
39 certification² and the reason for the denial, ²suspension of,²
40 revocation, or refusal. The ²**[commissioner]** shall also notify the ²**[**
41 Division of Consumer Affairs ²**[of]** shall update the list of
42 temporary help service firms certified to make designated
43 classification placements on its website to reflect² any denial,
44 ²suspension,² revocation or refusal to renew the ²**[registration]**
45 certification² of a temporary help service firm²**],** and the division
46 shall update its list of registered temporary help service firms on the
47 Division of Consumer Affairs' website to reflect these changes².

1 The ²**[commissioner]** director² may deny, ²suspend,² revoke, or
 2 refuse to renew any ²**[registration]** certification² issued under
 3 section 8 of P.L. , c. (C.) (pending before the Legislature
 4 as this bill) on the following grounds:

5 (1) The temporary help service firm is in default of payment of
 6 the ²**[registration]** certification² fee required under section 8 of
 7 P.L. , c. (C.) (pending before the Legislature as this bill),
 8 fails to obtain ²or maintain² or terminates the surety bond required
 9 under section 8 of P.L. , c. (C.) (pending before the
 10 Legislature as this bill), or otherwise fails to comply with the
 11 requirements under section 8 of P.L. , c. (C.) (pending
 12 before the Legislature as this bill);

13 (2) The ²**[registration]** certification² required under section 8 of
 14 P.L. , c. (C.) (pending before the Legislature as this bill)
 15 was procured by fraud or false representation of fact;

16 (3) The temporary help service firm is subject to a court order
 17 entering final judgment for violations of P.L. , c. (C.)
 18 (pending before the Legislature as this bill) or for violations of
 19 P.L.1966, c.113 (C.34:11-56a et seq.) and the judgment was not
 20 satisfied within 30 days of either:

21 (a) the expiration of the time for filing an appeal from the final
 22 judgment order; or

23 (b) if a timely appeal was made, the date of the final resolution
 24 of that appeal and any subsequent appeals resulting in final judicial
 25 affirmation of the findings of a violation;

26 (4) The temporary help service firm has failed to comply with
 27 the terms of an administrative penalty or final order, within 30 days
 28 of issuance of that penalty or order, issued by the commissioner ²or
 29 the director² pursuant to P.L. , c. (C.) (pending before the
 30 Legislature as this bill) or ²issued by the commissioner pursuant to²
 31 P.L.1966, c.113 (C.34:11-56a et seq.) for which all appeal rights
 32 have been exhausted; ²**[or]**²

33 (5) The temporary help service firm has been determined
 34 through a separate enforcement process to be operating in violation
 35 of any law²; or

36 (6) The temporary help service firm has committed one or more
 37 violations of P.L. , c. (C.) (pending before the Legislature as
 38 this bill), that have jeopardized the public health, safety, or welfare,
 39 or that call into question the firm's ability to operate as a temporary
 40 help service firm in compliance with P.L. , c. (C.) (pending
 41 before the Legislature as this bill).

42 c. If a temporary help service firm's application for initial
 43 registration or renewal is denied pursuant to section 14 of P.L.1981,
 44 c.1 (C.56:8-1.1) or any rules or regulations promulgated thereunder,
 45 or if a temporary help service firm's registration is suspended,
 46 revoked, or not renewed for any reason, the director shall take the
 47 same action against the temporary help service firm with respect to

1 an application or a certification under section 8 of P.L. _____,
2 c. (C. _____) (pending before the Legislature as this bill). If a
3 person or entity that holds or seeks a license or registration that
4 authorizes the person or entity to provide temporary help services
5 pursuant to any other law, rule, or regulation is denied such license
6 or registration, or if such license or registration is suspended,
7 revoked, or not renewed for any reason, the director shall take the
8 same action against the temporary help service firm with respect to
9 an application or a certification under section 8 of P.L. _____,
10 c. (C. _____) (pending before the Legislature as this bill).

11 d. The director shall not deny, revoke, or refuse to renew a
12 certification under this section except upon reasonable notice to,
13 and opportunity to be heard by, the applicant or certification-holder.
14 The director may, if the director finds it to be in the public interest,
15 suspend a certification for any period of time that the director
16 determines to be proper, or assess a penalty in lieu of suspension, or
17 both, and may issue a new certification, notwithstanding the
18 revocation of a prior certification, provided the director finds the
19 applicant to have become entitled to a new certification².

20

21 13. Section 1 of P.L.1989, c.331 (C.34:8-43) is amended to read
22 as follows:

23 1. As used in **【this act】** P.L.1989, c.331 (C.34:8-43 et al.):

24 "Accepting employment" means that a job seeker has entered
25 into an agreement with an employer which includes:

- 26 (1) The terms and conditions of employment;
27 (2) The salary or wages and any benefits to be paid to the job
28 seeker as compensation for employment; and
29 (3) The date, time and place employment will commence.

30 "A career consulting or outplacement organization" means any
31 person, required to be registered under section 24 of **【this act】**
32 P.L.1989, c.331 (C.34:8-65), providing or rendering services, with
33 or without related products, in connection with advice, instruction,
34 analysis, recommendation or assistance concerning past, present, or
35 future employment or compensation for an individual's time, labor
36 or effort.

37 "Agent" means any individual who performs any function or
38 activity for or on behalf of any person, the purpose of which is to
39 provide services or products to individuals seeking employment,
40 career guidance or counseling, or employment related services or
41 products.

42 "Applicant" means any person applying for licensing or
43 registration under **【this act】** P.L.1989, c.331 (C.34:8-43 et al.).

44 "Attorney General" means the Attorney General of this State or a
45 designee.

46 "Baby sitter" means and includes any individual under 16 years
47 of age, other than a registered nurse or a licensed nurse, entrusted
48 temporarily with the care of children during the absence of their

1 parents, guardians, or individuals standing in loco parentis to them.
2 This definition shall not include persons regularly employed by
3 agencies, or institutions operated by or under the control or
4 supervision of this State, or any of its political subdivisions, nor any
5 child care facilities operated for the care of children when the
6 facilities are similarly controlled or supervised.

7 "Booking agency" means any person who procures, offers,
8 promises, or attempts to procure employment for performing artists,
9 or athletes, not under the jurisdiction of the Athletic Control Board,
10 and who collects a fee for providing those services.

11 "Bureau" means the Bureau of Employment and Personnel
12 Services in the Division of Consumer Affairs within the Department
13 of Law and Public Safety created pursuant to section 2 of **[this act]**
14 P.L.1989, c.331 (C.52:17B-139.4).

15 "Career counseling service" means any business that, through its
16 agents or otherwise, procures or represents itself as procuring
17 employment or employment assistance or advertises in any manner
18 the following services for a fee: career counseling; vocational
19 guidance; aptitude, achievement or vocational testing; executive
20 consulting; personnel consulting; career management, evaluation, or
21 planning; the development of resumes and other promotional
22 materials relating to the preparation for employment; or referral
23 services relating to employment or employment qualifications. A
24 career counseling service shall be licensed as an employment
25 agency pursuant to the provisions of **[this act]** P.L.1989, c.331
26 (C.34:8-43 et al.). A career counseling service shall not include
27 career consulting or outplacement organizations required to be
28 registered under section 24 of **[this act]** P.L.1989, c.331 (C.34:8-
29 65).

30 "Chief" means the Chief of the Bureau of Employment and
31 Personnel Services.

32 "Consulting firm" means any person required to be registered
33 under section 23 of **[this act]** P.L.1989, c.331 (C.34:8-64) that:

34 (1) Identifies, appraises, refers or recommends individuals to be
35 considered for employment by the employer; and

36 (2) Is compensated for services solely by payments from the
37 employer and is not, in any instance, compensated, directly or
38 indirectly, by an individual who is identified, appraised, referred or
39 recommended.

40 "Director" means the Director of the Division of Consumer
41 Affairs in the Department of Law and Public Safety, or his
42 designee.

43 "Employer" means a person seeking to obtain individuals to
44 perform services, tasks, or labor for which a salary, wage, or other
45 compensation or benefits are to be paid.

46 "Employment agency" means any person who, for a fee, charge
47 or commission:

1 (1) Procures or obtains, or offers, promises or attempts to
2 procure, obtain, or assist in procuring or obtaining employment for
3 a job seeker or employees for an employer; or

4 (2) Supplies job seekers to employers seeking employees on a
5 part-time or temporary assignment basis who has not filed
6 notification with the Attorney General pursuant to the provisions of
7 section **[1]** 14 of P.L.1981, c.1 (C.56:8-1.1); or

8 (3) Procures, obtains, offers, promises or attempts to procure or
9 obtain employment or engagements for actors, actresses,
10 performing artists, vocalists, musicians or models; or

11 (4) Acts as a placement firm, career counseling service, or
12 resume service; or

13 (5) Acts as a nurses' registry.

14 ²["Employment agency" does not mean "temporary help service
15 firm" as that term is defined and used in sections 1 through 12 of
16 P.L. , c. (C.) (pending before the Legislature as this bill).]²

17 The director shall have the authority to determine, from time to
18 time, that a particular employment agency or career-related service
19 or product, not otherwise expressly subject to the provisions of
20 **[this act]** P.L.1989, c.331 (C.34:8-43 et al.), is subject to whichever
21 requirements of **[this act he]** P.L.1989, c.331 (C.34:8-43 et al.) the
22 director deems appropriate.

23 "Fee, charge or commission" means any payment of money, or
24 promise to pay money to a person in consideration for performance
25 of any service for which licensure or registration is required by
26 **[this act]** P.L.1989, c.331 (C.34:8-43 et al.), or the excess of money
27 received by a person furnishing employment or job seekers over
28 what he has paid for transportation, transfer of baggage or lodging
29 for a job seeker. "Fee, charge or commission" shall also include the
30 difference between the amount of money received by any person
31 who either furnishes job seekers or performers for any
32 entertainment, exhibition or performance, or who furnishes baby
33 sitters for any occasion, and the amount paid by the person to the
34 job seekers, performers or baby sitters.

35 "Job listing service" means any person required to be registered
36 under section 25 of **[this act]** P.L.1989, c.331 (C.34:8-66) who, by
37 advertisement or other means, offers to provide job seekers with a
38 list of employers, a list of job openings or a similar publication, or
39 prepares resumes or lists of applicants for distribution to potential
40 employers, where a fee or other valuable consideration is exacted or
41 attempted to be collected, either directly or indirectly.

42 "Job seeker" means any individual seeking employment, career
43 guidance or counseling or employment related services or products.

44 "Job seeker contingent liability" means a provision in an
45 agreement between an employment agency and a job seeker
46 whereby the job seeker may become liable, in whole or in part, to
47 pay a fee, charge or commission of any amount, directly or

1 indirectly, on account of any service rendered by the employment
2 agency.

3 "Just cause for voluntary termination of employment by a job
4 seeker" means and includes, but is not limited to, cases in which
5 material misrepresentations of the terms or conditions of
6 employment have been relied upon by a job seeker who would not
7 have accepted the employment if the grounds for termination were
8 known before acceptance of the employment.

9 "License" means a license issued by the director to any person
10 to:

11 (1) Carry on the business of an employment agency; and

12 (2) Perform, as an agent of the agency, any of the functions
13 related to the operation of the agency.

14 "Performing artist" means a model, musical, theatrical or other
15 entertainment performer employed or engaged individually or in a
16 group.

17 "Person" means any natural person or legal representative,
18 partnership, corporation, company, trust, business entity or
19 association, and any agent, employee, salesperson, partner, officer,
20 director, member, stockholder, associate, trustee or cestuis que
21 trustent thereof.

22 "Prepaid computer job matching service" means any person
23 required to be registered under section 25 of **[this act]** P.L.1989,
24 c.331 (C.34:8-66) who is engaged in the business of matching job
25 seekers with employment opportunities, pursuant to an arrangement
26 under which the job seeker is required to pay a fee in advance of, or
27 contemporaneously with, the supplying of the matching, but which
28 does not otherwise involve services for the procurement of
29 employment by the person conducting the service.

30 "Primary location" means an address used for 90 or more
31 calendar days by a person for the conduct of an activity regulated
32 under **[this act]** P.L.1989, c.331 (C.34:8-43 et al.).

33 "Principal owner" means any person who, directly or indirectly,
34 holds a beneficial interest or ownership in an applicant or who has
35 the ability to control an applicant.

36 "Temporary employment" means employment in which the
37 duration is fixed as some definite agreed period of time or by the
38 occurrence of some specified event, either of which shall be clearly
39 stated to all parties at the time of referral to the employment.

40 "Temporary help service firm" means any person who operates a
41 business which consists of employing individuals directly or
42 indirectly for the purpose of assigning the employed individuals to
43 assist the firm's customers in the handling of the customers'
44 temporary, excess or special work loads, and who, in addition to the
45 payment of wages or salaries to the employed individuals, pays
46 federal social security taxes and State and federal unemployment
47 insurance; carries worker's compensation insurance as required by
48 State law; and sustains responsibility for the actions of the

1 employed individuals while they render services to the firm's
2 customers. A temporary help service firm is required to comply
3 with the provisions of P.L.1960, c.39 (C.56:8-1 et seq.).
4 (cf: P.L.1989, c.331, s.1)

5
6 ²14. The rights and obligations established by P.L. _____,
7 c. (C. _____) (pending before the Legislature as this bill) shall be in
8 addition to those set forth in P.L.1960, c.39 (C.56:8-1 et seq.) and
9 any rules or regulations promulgated thereunder; P.L.1989, c.331
10 (C.34:8-43 et seq.) and any rules or regulations promulgated
11 thereunder; and any other applicable law, rule, or regulation.²

12
13 ²15. There is appropriated from the General Fund to the
14 Department of Labor and Workforce Development the sum of
15 \$1,000,000 for the purpose of funding the Department's activities
16 under P.L. _____, c. (C. _____) (pending before the Legislature as this
17 bill).²

18
19 ²[14.]16.² This act shall take effect ¹[immediately] on the
20 ²[90th] ²180th day after the date of enactment¹ ², except that
21 sections 3 and 10 shall take effect on the 90th day after the date of
22 enactment, provided however that the commissioner and director
23 may take such anticipatory action as deemed necessary prior to the
24 effective date².