

January 8, 2018

ASSEMBLY BILL NO. 5072

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 5072 with my recommendations for reconsideration.

New Jersey's wage and hour laws are crafted to ensure that covered employees are guaranteed a minimum wage and, where earned, overtime pay, and that payments of wages and earned overtime are made in a timely fashion. This bill would completely rework the enforcement procedures and remedies available for violations of the wage and hour laws. Among other changes, the bill would significantly expand criminal liability and civil and administrative sanctions for violations of these laws and mandate joint and several liability for labor contractors and client employers. It would also dramatically expand the jurisdiction of the Wage Collection Division in the Department of Labor and Workforce Development, a division that has traditionally handled smaller claims through a faster administrative procedure.

Businesses that intentionally cheat their employees out of earned compensation hurt not only their employees but also other businesses that are following the law. This conduct should be punished, and this bill contains appropriate ways to do so. However, the bill would lump all violations of the wage and hour laws together, treating paperwork errors and reasonable misinterpretations of the law the same as intentional wage theft. While I support penalizing businesses that seek to steal money from their employees, I cannot support expanding liability, especially criminal liability, to businesses that are doing their best to follow the letter of the law.

Therefore, I am recommending that the expanded liability and remedies for wage theft be limited to knowing and willful violations of the law. Doing so will ensure that aggrieved employees are properly compensated, while more draconian remedies are properly reserved for the most egregious conduct. I am also recommending removing the provision subjecting labor contractors and client employers to joint and several liability, which would allow aggrieved employees to bring actions for unpaid wages against businesses that do not actually pay them. The expanded criminal, civil, and administrative liability provided by this bill will ensure ample redress to employees against the employers that fail to properly compensate them, without subjecting businesses that are not liable for underpayments to burdensome litigation. Finally, I am recommending that jurisdiction of the Wage Collection Division be increased to \$45,000. This will allow more claims to be heard through the administrative process, while ensuring that complex matters are not only heard in more formal settings, but also processed in a way does not compromise the ability of the Wage Collection Division to timely render decisions in all matters before it.

Accordingly, I herewith return Assembly Bill No. 5072 and recommend it be amended as follows:

<u>Page 2, Section 1, Line 15:</u>	After "employer" insert ", knowingly and willfully"
<u>Page 2, Section 1, Line 39:</u>	After "committed a" insert "knowing and willful"
<u>Page 2, Section 1, Line 44:</u>	After "guilty of" insert "knowingly and willfully"
<u>Page 3, Section 1, Lines 7-15:</u>	Delete in their entirety
<u>Page 3, Section 1, Line 16:</u>	Delete "i." and insert "h."

Page 3, Section 1, Line 17: Delete ", including wages or damages related to retaliation,"

Page 3, Section 1, Line 21: Delete "j." and insert "i."

Page 3, Section 1, Line 37: Delete "i." and insert "h."

Page 6, Section 2, Line 28: Delete "shall" and insert "may"

Page 6, Section 2, Line 29: Delete "pursuant to R.S.34:11-58"

Page 6, Section 3, Line 39: Delete ", or who discharges,"

Page 6, Section 3, Lines 40-48: Delete in their entirety

Page 7, Section 3, Lines 1-3: Delete in their entirety

Page 7, Section 3, Line 4: Delete "under State laws regarding wages and hours worked,"

Page 7, Section 3, Line 10: Delete "In the case of a discharge"

Page 7, Section 3, Lines 11-29: Delete in their entirety

Page 7, Section 3, Line 33: Delete "or taken"

Page 7, Section 3, Line 34: Delete in its entirety

Page 7, Section 3, Line 35: Delete "subsection a. of this section,"

Page 8, Section 3, Line 16: After "employer" insert "knowingly and willfully"

Page 8, Section 3, Line 21: Delete "or any wages due because of any discriminatory action"

Page 8, Section 3, Line 22: Delete "in violation of subsection a. of this section,"

Page 8, Section 3, Line 25: Delete ", except that if there is an agreement of the employee to accept"

Page 8, Section 3, Lines 26-28: Delete in their entirety

Page 8, Section 3, Line 29: Delete "that were due prior to the supervised payment"

Page 8, Section 3, Line 50: After "and" insert ", if the failure to pay is knowing and willful,"

Page 9, Section 3, Line 2: After "wages" insert ", "

<u>Page 9, Section 4, Line 17:</u>	Delete "or because the"
<u>Page 9, Section 4, Line 18:</u>	Delete in its entirety
<u>Page 9, Section 4, Line 19:</u>	Delete "regarding wages and hours of work,"
<u>Page 9, Section 4, Line 27:</u>	Delete "and an additional amount of liquidated damages equal of 200"
<u>Page 9, Section 4, Line 28:</u>	Delete "percent of the wages due,"
<u>Page 9, Section 4, Line 32:</u>	After "seq.)" insert ", about which the employer is made aware,"
<u>Page 9, Section 4, Line 34:</u>	Delete "only"
<u>Page 9, Section 4, Line 34:</u>	Delete "clear and convincing"
<u>Page 9, Section 4, Line 36:</u>	Delete "or other communication"
<u>Page 10, Section 5, Lines 35-36:</u>	Delete in their entirety
<u>Page 10, Section 5, Line 38:</u>	Delete ", except that if there is"
<u>Page 10, Section 5, Lines 39-42:</u>	Delete in their entirety
<u>Page 10, Section 5, Line 43:</u>	Delete "due prior to the supervised payment"
<u>Page 11, Section 5, Line 16:</u>	Delete "and liquidated damages equal"
<u>Page 11, Section 5, Line 17:</u>	Delete "to 200 percent the amount of the unpaid wages"
<u>Page 11, Section 6, Line 26:</u>	Delete "six" and insert "three"
<u>Page 12, Section 8, Line 33:</u>	Delete "An employee may file a claim for wages against an"
<u>Page 12, Section 8, Lines 34-39:</u>	Delete in their entirety
<u>Page 12, Section 8, Line 40:</u>	Delete "c."
<u>Page 12, Section 8, Line 44:</u>	After "award" insert "when the sum in controversy, exclusive of costs, does not exceed \$45,000"
<u>Page 13, Section 8, Line 5:</u>	Delete "d." and insert "b."
<u>Page 13, Section 8, Line 12:</u>	Delete "e." and insert "c."
<u>Page 13, Section 8, Line 13:</u>	Delete ", including liquidated damages,"

<u>Page 13, Section 8, Line 27:</u>	Delete "f." and insert "d."
<u>Page 13, Section 8, Line 39:</u>	Delete "g." and insert "e."
<u>Page 14, Section 9, Line 3:</u>	Delete "ten" and insert "30"
<u>Page 14, Section 9, Line 16:</u>	Delete "at a place of"
<u>Page 14, Section 9, Line 17:</u>	Delete "business or employment"
<u>Page 14, Section 9, Line 18:</u>	After "employment" insert "where the violator is engaged in business operations"
<u>Page 15, Section 10, Lines 1-45:</u>	Delete in their entirety
<u>Page 15, Section 11, Line 47:</u>	Delete "11." and insert "10."
<u>Page 16, Section 11, Line 2:</u>	Delete "12" and insert "11"
<u>Page 16, Section 12, Line 8:</u>	Delete "12." and insert "11."
<u>Page 16, Section 12, Line 11:</u>	Delete "contract with" and insert "make information available to"
<u>Page 16, Section 12, Line 12:</u>	Delete "information"
<u>Page 16, Section 12, Line 16:</u>	After "laws;" insert "and"
<u>Page 16, Section 12, Lines 17-21:</u>	Delete in their entirety
<u>Page 16, Section 12, Line 22:</u>	Delete "c." and insert "b."
<u>Page 16, Section 12, Lines 27-48:</u>	Delete in their entirety
<u>Page 17, Section 13, Line 1:</u>	Delete "13." and insert "12."
<u>Page 17, Section 13, Line 11:</u>	After "effected;" insert "and"
<u>Page 17, Section 13, Lines 12-14:</u>	Delete in their entirety
<u>Page 17, Section 13, Line 15:</u>	Delete "(3)" and insert "(2)"
<u>Page 17, Section 13, Line 18:</u>	Delete ", in consultation with the Administrative"
<u>Page 17, Section 13, Line 19:</u>	Delete "Director of the Courts and the Attorney General,"
<u>Page 17, Section 13, Line 21:</u>	Delete "the following information regarding each" and insert "any final administrative decisions made during the preceding period of not less than 12 months"
<u>Page 17, Section 13, Line 22:</u>	Delete "wage claim"

Page 17, Section 13, Line 23: Delete "in a final" and insert
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Page 17, Section 13, Lines 24-37: Delete in their entirety

Page 17, Section 14, Line 39: Delete "14." and insert "13."

[seal]

Respectfully,

/s/ Chris Christie

Governor

Attest:

/s/ James J. DiGiulio

Chief Counsel to the Governor