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**MEMORANDUM**

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**TO:** Senate Labor Committee  
**FROM:** Alida Kass, President & Chief Counsel  
**SUBJECT:** S943  
**DATE:** February 13, 2020

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The New Jersey Civil Justice Institute is a statewide, bipartisan coalition of the state's largest employers, small businesses, and leading trade associations advocating for a fair and predictable civil justice system in New Jersey. On behalf of our members, **we respectfully oppose S943.**

The core concept of the legislation is useful. It would help disentangle W-2 employment status from ready access to benefits – a factor that puts undue pressure on employment status and can introduce an unnecessary challenge to entrepreneurs looking to work independently.

But as currently drafted, the legislation would do more harm than good. It would create significant disincentives against working with freelance workers in the state and force all contract workers into a one-size-fits-all box that does not align with the business models or needs of many of these individuals.

The first overarching concern is the requirement that the contracting entities pay an additional contribution *on top* of the cost to hire the worker, as opposed to as a deduction, as it would create a significant disincentive to working with individuals in New Jersey. As we have seen in California, when state law imposes specific restrictions on freelance work, it is very easy for platforms to simply stop hiring workers in that state. We have already seen numerous hiring entities are now posting work opportunities with the caveat that workers in California are not eligible, and thousands of jobs have already been lost.

The second concern is that 25% is an extraordinarily high deduction to make from freelance workers' paychecks, especially for the highly compensated work common in the freelance community, such as therapists, attorneys, etc. Extracting 25% of that compensation would kill the freelance model. And the hourly rate is not a feasible alternative – most hiring entities do not track hours and freelance workers are not paid by the hour. Requiring that kind of control that could even cause the working relationship to fail the existing ABC test.

Finally, while portable benefits could be a useful mechanism for some freelance workers, the freelance world is not a one-size-fits-all community. Those who do not have access to benefits, either through other full-time employment, or through their own, existing providers, could benefit from the creation of an easy user-friendly mechanism. But the benefits that it would provide are simply not helpful for a significant portion of freelance workers. Some mechanism to limit the scope of who is covered is essential to ensuring that this legislation does not operate as a massive job-killing tax on independent work. Making the benefits optional

or limiting the mandatory element to a workers' compensation-type mechanism would be the easiest way to ensure that workers are not penalized for having responsibly made their own arrangements for these benefits.

We appreciate the sponsors consideration of possible amendments, and we believe that with modest changes discussed above, it will achieve the desired objective without causing undue harm. However, we oppose this legislation as currently drafted.