

To: The Honorable Craig Coughlin
The Honorable Annette Quijano
Members of the New Jersey General Assembly

From: New Jersey Air Conditioning Contractors Association
New Jersey Apartment Association
New Jersey Association of Realtors
New Jersey Bankers Association
New Jersey Builders Association
Bus Association of New Jersey
New Jersey Business & Industry Association
New Jersey Cannabis Industry Association
New Jersey Chamber of Commerce
Chamber of Commerce Southern New Jersey
New Jersey Civil Justice Institute
Coalition of Automotive Retailers
Commerce and Industry Association of New Jersey
New Jersey Concrete and Aggregate Association
New Jersey Credit Union League
New Jersey Dental Association
New Jersey Food Council
Fuel Merchants Association of New Jersey
New Jersey Funeral Directors Association
New Jersey Gasoline and C-Store Association
Home Care & Hospice Association of New Jersey
New Jersey Independent Electrical Contractors Association
Insurance Council of New Jersey
Limousine Association of New Jersey
New Jersey Motor Truck Association
NFIB/New Jersey
New Jersey Restaurant & Hospitality Association
New Jersey Retail Merchants Association
New York Shipping Association, Inc.
New Jersey Society of CPA's
New Jersey Staffing Alliance

Date: April 11, 2019

Re: Amendments to S-1790/A-2903

On behalf of the organizations listed above, whose members employ over one million employees statewide and contract with thousands of independent contractors, we respectfully request that S-1790/A-2903 either be withdrawn or amended to create a reasonable standard for New Jersey businesses as it pertains to wage and hour violations.

The above organizations and their members support efforts to target willful bad actors, or more specifically, companies that willfully and knowingly violate state and federal wage and hour laws.

Furthermore, we collectively support appropriate penalties for those violations. **However, S-1790/A-2903 would *criminalize inadvertent wage and hour violations* and hold businesses responsible for the actions of their contractors.**

Proposing jail time and significant penalties, such as six years of treble damages for employers who make inadvertent mistakes, or for actions of companies where they have no control, does not create a fairer economy. Rather, the bills create a hostile business climate in New Jersey, incentivizing litigation and treating willful violations the same as inadvertent mistakes.

Some of the penalties in the bill includes:

Jail time for first offense:

- 3-5 years in jail with *presumption* for jail time for first offense, for new crime of “pattern of wage nonpayment.”
- Stacking concurrent violations to establish “pattern” with no notice that policy violates law.

Class actions for six years of treble damages:

- Profit motive to bring claims without regard to willfulness of violation.
- Threat of massive penalties encourages low-merit claims and shakedown settlements.

Joint and several liability for contracting services:

- Businesses responsible for the *unknown* wage and hour violations of contractor they have hired.
- Liable for full treble damages and disorderly persons convictions for actions they *do not control*.

Applies to all wage and hour violations:

- Independent contractor/employee misclassification.
- Manner of providing benefits, like unscheduled sick leave during blackout periods for disputably qualifying reasons.
- Other fact-specific disputes, like calculations of commissions and determining compensable time.

Losing on reasonably disputable points should not mean massive penalties and years of jail time. And a business should be able to contract a service out to a vendor, or bring on additional workers to meet peak demand, without assuming the risk of treble-damage class actions for unknown violations of that vendor. We are requesting reasonable amendments to protect good faith businesses, while retaining all necessary tools to punish willful violators.

Suggested Amendments:

1) Add safe harbor to Sections 4 and 7 for inadvertent violations made in good faith:

The penalties and damages provided for violations of this section shall not apply to inadvertent errors made in good faith. Penalties and damages for inadvertent errors made in good faith shall be limited to two years’ actual damages, and a \$500 penalty payable pursuant to the “Penalty Enforcement Law of 1999.”

2) Amend Section 9 to limit joint and several liability to known violations:

... for any violations of the provisions of State wage and hour laws if the employer had knowledge of the violations ~~or violations of the provisions of section 10 of P.L.1999, c.90 (C.2C:40A-2)~~ regarding

compliance with State wage and hour laws, ~~including provisions regarding retaliatory actions against employees for exercising their rights under any of those laws,~~ and both may be subject to any remedy provided for violations of those laws.

3) Amend Section 13 to limit criminal penalties to knowing violations:

- a. A person commits the crime of pattern of wage nonpayment if the person knowingly ~~commits an act that~~ violates the provisions of ...and ~~if~~ the person has, at the time of that act, ~~on~~ two or more prior ~~occasions, been convicted~~ convictions of a violation of the provisions ... Knowledge that the action constitutes a violation of law is a necessary element of the offense.
- b. Pattern of wage non-payment is a crime of the third degree, ~~except that the presumption of nonimprisonment set forth in 7 subsection c. of N.J.S.2C:44-1 for persons who have not previously been convicted of an offense shall not apply.~~