

To: The Honorable Steve Sweeney
The Honorable Craig Coughlin
The Honorable Loretta Weinberg
The Honorable Annette Quijano

From: New Jersey Air Conditioning Contractors Association
New Jersey Apartment Association
New Jersey Associated Builders and Contractors
New Jersey Association of Realtors
New Jersey Bankers Association
New Jersey Builders Association
New Jersey Building Material Dealers 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
Chemistry Council of 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
HealthCare Institute of New Jersey
Home Care & Hospice Association of New Jersey
New Jersey Independent Electrical Contractors Association
Insurance Council of New Jersey
Irrigation Association of New Jersey
Limousine Association of New Jersey
Maritime Association of the Port of New York and New Jersey
Mechanical Contractors Association of New Jersey
New Jersey Motor Truck Association
NAIOP/New Jersey
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: June 18, 2019

Re: S392/A1852 and S1790/A2903

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employees statewide and contract with thousands of independent contractors, we respectfully request that S1790/A2903 be withdrawn, and that A1852/S392 be advanced in its place. Barring that, we request that A2903 be 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, S1790/A2903 would criminalize inadvertent wage and hour violations and hold businesses responsible for the actions of their contractors. And even after a *third round* of revisions – adopted June 10th as floor amendments in the Assembly – the core problems with this legislation remain unresolved.**

This third set of amendments tracks what is by now a familiar pattern. Language has been added that creates the illusion of addressing the legitimate concerns of New Jersey businesses, while making no meaningful improvements. The core dynamic of this legislation remains unchanged. It would threaten vastly excessive civil and criminal penalties for inadvertent mistakes in order to extract concessions from good-faith employers, forcing them to choose between protecting their business or defending their rights in court, and in the process depriving the courts of the opportunity to clarify disputed points of law.

Penalties provided in the bill include:

Jail time on first notice for inadvertent violators:

- 3-5 years in jail with *presumption* of jail time for new crime of “pattern of wage nonpayment” applies to employers who reasonably believe in compliance with law.
- 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 that S1790/A2903 be withdrawn, and that A1852/S392 be advanced in its place. Barring that, we request that A2903 be amended to create a reasonable standard for New Jersey businesses as it pertains to wage and hour violations.

Requested Amendments:

- 1) Add *effective* safe harbor to Sections 4 and 7 for inadvertent violations made in good faith, as June 10th floor amendment language is both ineffective and not applied to Section 7:

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.~~