

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 15

STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED JANUARY 24, 2019

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SYNOPSIS

Raises, over time, hourly minimum wage to \$15.00.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on January 28, 2019, with amendments.

(Sponsorship Updated As Of: 2/1/2019)

1 **AN ACT** raising the minimum wage, amending and supplementing
2 P.L.1966, c.113, and supplementing P.L.1945, c.162 (C.54:10A-
3 1 et seq.) and Title 54A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to
9 read as follows:

10 2. As used in this act:

11 (a) "Commissioner" means the Commissioner of Labor and
12 Workforce Development.

13 (b) "Director" means the director in charge of the bureau
14 referred to in section 3 of this act.

15 (c) "Wage board" means a board created as provided in section
16 10 of this act.

17 (d) "Wages" means any moneys due an employee from an
18 employer for services rendered or made available by the employee
19 to the employer as a result of their employment relationship
20 including commissions, bonus and piecework compensation and
21 including **[any gratuities received by an employee for services**
22 **rendered for an employer or a customer of an employer and]** the
23 fair value of any food or lodgings supplied by an employer to an
24 employee, and, until December 31, 2018, "wages" includes any
25 gratuities received by an employee for services rendered for an
26 employer or a customer of an employer. The commissioner may, by
27 regulation, establish the average value of gratuities received by an
28 employee in any occupation and the fair value of food and lodging
29 provided to employees in any occupation, which average values
30 shall be acceptable for the purposes of determining compliance with
31 this act in the absence of evidence of the actual value of such items.

32 (e) "Regular hourly wage" means the amount that an employee
33 is regularly paid for each hour of work as determined by dividing
34 the total hours of work during the week into the employee's total
35 earnings for the week, exclusive of overtime premium pay.

36 (f) "Employ" includes to suffer or to permit to work.

37 (g) "Employer" includes any individual, partnership,
38 association, corporation, and the State and any county,
39 municipality, or school district in the State, or any agency,
40 authority, department, bureau, or instrumentality thereof, or any
41 person or group of persons acting directly or indirectly in the
42 interest of an employer in relation to an employee.

43 (h) "Employee" includes any individual employed by an
44 employer.

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:

¹ Assembly AAP committee amendments adopted January 28, 2019.

1 (i) "Occupation" means any occupation, service, trade,
2 business, industry or branch or group of industries or employment
3 or class of employment in which employees are gainfully employed.

4 (j) "Minimum fair wage order" means a wage order
5 promulgated pursuant to this act.

6 (k) "Fair wage" means a wage fairly and reasonably
7 commensurate with the value of the service or class of service
8 rendered and sufficient to meet the minimum cost of living
9 necessary for health.

10 (l) "Oppressive and unreasonable wage" means a wage which is
11 both less than the fair and reasonable value of the service rendered
12 and less than sufficient to meet the minimum cost of living
13 necessary for health.

14 (m) "Limousine" means a motor vehicle used in the business of
15 carrying passengers for hire to provide prearranged passenger
16 transportation at a premium fare on a dedicated, nonscheduled,
17 charter basis that is not conducted on a regular route and with a
18 seating capacity in no event of more than 14 passengers, not
19 including the driver, provided, that such a motor vehicle shall not
20 have a seating capacity in excess of four passengers, not including
21 the driver, beyond the maximum passenger seating capacity of the
22 vehicle, not including the driver, at the time of manufacture.
23 "Limousine" shall not include taxicabs, hotel or airport shuttles and
24 buses, buses employed solely in transporting school children or
25 teachers to and from school, vehicles owned and operated directly
26 or indirectly by businesses engaged in the practice of mortuary
27 science when those vehicles are used exclusively for providing
28 transportation related to the provision of funeral services or vehicles
29 owned and operated without charge or remuneration by a business
30 entity for its own purposes.

31 (n) "Seasonal employment" means employment during a year by
32 an employer that is a seasonal employer¹,¹ or¹ employment by a¹
33 non-profit or government entity of an individual who is not
34 employed by that employer outside of the period of that year
35 commencing on May 1 and ending September 30,¹ or employment
36 by a governmental entity in a recreational program or service during
37 the period commencing on May 1 and ending September 30,¹
38 except that "seasonal employment" does not include employment of
39 employees engaged¹ to labor on a farm¹ on¹ either¹ a piece-rate or
40 regular hourly rate basis¹ [to labor on a farm]¹.

41 (o) "Seasonal employer" means¹ an employer who exclusively
42 provides its services in a continuous period of not more than ten
43 weeks during the months of June, July, August, and September, or¹
44 an employer for which, during the immediately previous calendar
45 year, not less than two thirds of the employer's gross receipts were
46 received in a continuous period of not more than sixteen weeks¹ or
47 for which not less than 75 percent of the wages paid by the

1 employer during the immediately preceding year were paid for work
2 performed during a single calendar quarter¹.

3 (p) "Small employer" means any employer who employed less
4 than six employees for every working day during each of a majority
5 of the calendar workweeks in the current calendar year and less than
6 six employees for every working day during not less than 48
7 calendar workweeks in the preceding calendar year, except that, if
8 the employer was newly established during the preceding calendar
9 year, the employer shall be regarded as a "small employer" if the
10 employer employed less than six employees for every working day
11 during all of the weeks of that year, and during a majority of the
12 calendar workweeks in the current calendar year, and, if the
13 employer is newly established during the current calendar year, the
14 employer shall be regarded as a "small employer" if the employer
15 employed less than six employees for every working day during a
16 majority of the calendar workweeks in the current calendar year.

17 (cf: P.L.2001, c.416, s.2)

18

19 2. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to
20 read as follows:

21 5. **【Every】** a. Except as provided in subsections c., d., e. and
22 g. of this section, each employer shall pay to each of his employees
23 wages at a rate of not less than 【\$5.05 per hour as of April 1, 1992
24 and, after January 1, 1999 the federal minimum hourly wage rate set
25 by section 6(a)(1) of the federal "Fair Labor Standards Act of 1938"
26 (29 U.S.C. s.206(a)(1)), and, as of October 1, 2005, \$6.15 per hour,
27 and as of October 1, 2006, \$7.15 per hour for 40 hours of working
28 time in any week and 1 1/2 times such employee's regular hourly
29 wage for each hour of working time in excess of 40 hours in any
30 week, except this overtime rate shall not include any individual
31 employed in a bona fide executive, administrative, or professional
32 capacity or, if】 \$8.85 per hour as of January 1, 2019 and, on
33 January 1 of 2020 and January 1 of each subsequent year, the
34 minimum wage shall be increased by any increase in the consumer
35 price index for all urban wage earners and clerical workers (CPI-W)
36 as calculated by the federal government for the 12 months prior to
37 the September 30 preceding that January 1, except that any of the
38 following rates shall apply if it exceeds the rate determined in
39 accordance with the applicable increase in the CPI-W for the
40 indicated year: on July 1, 2019, the minimum wage shall be \$10.00
41 per hour; on January 1, 2020, the minimum wage shall be \$11.00
42 per hour; and on January 1 of each year from 2021 to 2024,
43 inclusive, the minimum wage shall be increased from the rate of the
44 preceding year by \$1.00 per hour. If the federal minimum hourly
45 wage rate set by section 6 of the federal "Fair Labor Standards Act
46 of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
47 level higher than the State minimum wage rate set by this
48 subsection, then the State minimum wage rate shall be increased to

1 the level of the federal minimum wage rate and subsequent
2 increases based on increases in the CPI-W pursuant to this section
3 shall be applied to the higher minimum wage rate. If an applicable
4 wage order has been issued by the commissioner under section 17
5 (C.34:11-56a16) of this act, the employer shall also pay not less
6 than the wages prescribed in said order. The wage rates fixed in
7 this section shall not be applicable to part-time employees primarily
8 engaged in the care and tending of children in the home of the
9 employer, to persons under the age of 18 not possessing a special
10 vocational school graduate permit issued pursuant to section 15 of
11 P.L.1940, c.153 (C.34:2-21.15), or to persons employed as
12 salesmen of motor vehicles, or to persons employed as outside
13 salesmen as such terms shall be defined and delimited in regulations
14 adopted by the commissioner, or to persons employed in a volunteer
15 capacity and receiving only incidental benefits at a county or other
16 agricultural fair by a nonprofit or religious corporation or a
17 nonprofit or religious association which conducts or participates in
18 that fair.

19 **b. [The provisions of this section for the payment to an]**

20 **(1) An employer shall also pay each employee [of] not less than**
21 **1 1/2 times such employee's regular hourly rate for each hour of**
22 **working time in excess of 40 hours in any week, except that this**
23 **overtime rate shall not apply; to any individual employed in a bona**
24 **fide executive, administrative, or professional capacity; or to**
25 **employees engaged to labor on a farm or employed in a hotel; or to**
26 **an employee of a common carrier of passengers by motor bus; or to**
27 **a limousine driver who is an employee of an employer engaged in**
28 **the business of operating limousines; or to employees engaged in**
29 **labor relative to the raising or care of livestock.**

30 **(2) Employees engaged on a piece-rate or regular hourly rate**
31 **basis to labor on a farm shall be paid for each day worked not less**
32 **than the applicable minimum hourly wage rate multiplied by the**
33 **total number of hours worked.**

34 **(3) Full-time students may be employed by the college or**
35 **university at which they are enrolled at not less than 85% of the**
36 **effective applicable minimum wage rate.**

37 **c. Employees of a small employer, and employees who are**
38 **engaged in seasonal employment, except for employees who**
39 **customarily and regularly receive gratuities or tips who shall be**
40 **subject to the provisions of subsections a. and d. of this section,**
41 **shall be paid \$8.85 per hour as of January 1, 2019 and, on January 1**
42 **of 2020 and January 1 of each subsequent year, that minimum wage**
43 **rate shall be increased by any increase in the consumer price index**
44 **for all urban wage earners and clerical workers (CPI-W) as**
45 **calculated by the federal government for the 12 months prior to the**
46 **September 30 preceding that January 1, except that any of the**
47 **following rates shall apply if it exceeds the rate determined in**
48 **accordance with the applicable increase in the CPI-W for the**

1 indicated year: on January 1, 2020, the minimum wage shall be
2 \$10.30 per hour; and on January 1 of each year from 2021 to 2025,
3 inclusive, the minimum wage shall be increased from the rate of the
4 preceding year by eighty cents per hour, and, in 2026, the minimum
5 wage shall be increased from the rate of the preceding year by
6 seventy cents per hour, and, in each year from 2027 to 2028
7 inclusive, the minimum wage for employees subject to this
8 subsection c. shall be increased by the same amount as the increase
9 for employees subject to subsection a. of this section based on CPI-
10 W increases, plus one half of the difference between \$15.00 per
11 hour and the minimum wage in effect in 2026 for employees
12 pursuant to subsection a. of this section, so that, by 2028, the
13 minimum wage for employees subject to this subsection shall be the
14 same as the minimum wage in effect for employees subject to
15 subsection a. of this section. If the federal minimum hourly wage
16 rate set by section 6 of the federal "Fair Labor Standards Act of
17 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
18 level higher than the State minimum wage rate set by this
19 subsection, then the State minimum wage rate shall be increased to
20 the level of the federal minimum wage rate and subsequent
21 increases based on increases in the CPI-W pursuant to this
22 subsection shall be applied to the higher minimum wage rate.

23 d. Employees engaged on a piece-rate or regular hourly rate
24 basis to labor on a farm shall be paid \$8.85 per hour as of January
25 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent
26 year, that minimum wage rate shall be increased by any increase in
27 the consumer price index for all urban wage earners and clerical
28 workers (CPI-W) as calculated by the federal government for the 12
29 months prior to the September 30 preceding that January 1, except
30 that any of the following rates shall apply if it exceeds the rate
31 determined in accordance with the applicable increase in the CPI-W
32 for the indicated year:

33 (1) on January 1, 2020, the minimum wage shall be \$10.30 per
34 hour; on January 1, 2022, the minimum wage shall be \$10.90 per
35 hour; and on January 1 of each year from 2023 to 2024, inclusive,
36 the minimum wage shall be increased from the rate of the preceding
37 year by eighty cents per hour; and

38 (2) subject to the provisions of paragraph (3) of this subsection
39 d., minimum wage rates shall be increased as follows: on January 1
40 of 2025, the minimum wage shall be increased to \$13.40, and on
41 January 1 of each year from 2026 to 2027, inclusive, the minimum
42 wage shall be increased from the rate of the preceding year by
43 eighty cents per hour, and, in each year from 2028 to 2030
44 inclusive, the minimum wage for employees subject to this
45 subsection d. shall be increased during that year by the same
46 amount as the increase in that year for employees subject to
47 subsection a. of this section based on CPI-W increases, plus one
48 third of the difference between \$15.00 per hour and the minimum

1 wage in effect in 2027 for employees pursuant to subsection a. of
2 this section, so that, by 2030, the minimum wage for employees
3 subject to this subsection shall be the same as the minimum wage in
4 effect for employees subject to subsection a. of this section.

5 (3) Not later than March 31, 2024, the commissioner and the
6 Secretary of Agriculture shall review the report issued by the
7 commissioner pursuant to subsection b. of section 4 of P.L. _____,
8 c. (C. _____)(pending before the Legislature as this bill) and shall
9 consider any information provided by the secretary regarding the
10 impact on farm employers and the viability of the State's
11 agricultural industry of the increases of the minimum wage made
12 pursuant to paragraph (1) of this subsection, and the potential
13 impact of the increases which would be set by paragraph (2) of this
14 subsection, including comparisons with the wage rates in the
15 agricultural industries in other states, and shall
16 recommend: approval of the increases set forth in paragraph (2) of
17 this subsection; disapproval of the increases set forth in paragraph
18 (2) of this subsection; or an alternative manner of changing the
19 minimum wage after 2024 for employees engaged on a piece-rate or
20 regular hourly rate basis to labor on a farm. In contemplation of the
21 possibility that the commissioner and the secretary are unable to
22 agree on the recommendation required by this paragraph, by
23 December 31, 2021, the Governor shall appoint a public member
24 subject to advice and consent by the Senate, who will serve as a tie-
25 breaking member if needed. The increases set forth in paragraph (2)
26 of this subsection shall take effect unless there is a recommendation
27 pursuant to this paragraph to disapprove the increases or for an
28 alternative manner of changing the minimum wage after 2024 for
29 employees engaged on a piece-rate or regular hourly rate basis to
30 labor on a farm and the Legislature, not later than June 30, 2024,
31 enacts a concurrent resolution approving the implementation of that
32 recommendation. Beginning in 2024, the commissioner, secretary,
33 and public member shall meet biennially to make either a one or
34 two year recommendation to the Legislature for implementation by
35 way of concurrent resolution.

36 (4) If the federal minimum hourly wage rate set by section 6 of
37 the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or
38 a successor federal law, is raised to a level higher than the State
39 minimum wage rate set by this subsection, then the State minimum
40 wage rate shall be increased to the level of the federal minimum
41 wage rate and subsequent increases based on increases in the CPI-
42 W pursuant to this subsection shall be applied to the higher
43 minimum wage rate.

44 e. With respect to an employee who customarily and regularly
45 receives gratuities or tips, every employer is entitled to a credit for
46 the gratuities or tips received by the employee against the hourly
47 wage rate that would otherwise be paid to the employee pursuant to
48 subsection a. of this section of the following amounts: after

1 December 31, 2018 and before July 1, 2019, \$6.72 per hour; after
2 June 30, 2019 and before January 1, 2020, \$7.37 per hour; during
3 calendar years 2020, 2021 and 2022, \$7.87 per hour; during
4 calendar year 2023, \$8.87 per hour; and during calendar year 2024
5 and subsequent calendar years, \$9.87 per hour.

6 f. Notwithstanding the provisions of this section to the
7 contrary, every trucking industry employer shall pay to all drivers,
8 helpers, loaders and mechanics for whom the Secretary of
9 Transportation may prescribe maximum hours of work for the safe
10 operation of vehicles, pursuant to section 31502(b) of the federal
11 Motor Carrier Act, 49 U.S.C.s.31502(b), an overtime rate not less
12 than 1 1/2 times the minimum wage required pursuant to this
13 section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking
14 industry shall be paid no less than the minimum wage rate as
15 provided in this section and N.J.A.C. 12:56-3.1. As used in this
16 section, "trucking industry employer" means any business or
17 establishment primarily operating for the purpose of conveying
18 property from one place to another by road or highway, including
19 the storage and warehousing of goods and property. Such an
20 employer shall also be subject to the jurisdiction of the Secretary of
21 Transportation pursuant to the federal Motor Carrier Act, 49
22 U.S.C.s.31501 et seq., whose employees are exempt under section
23 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29
24 U.S.C. s.213(b)(1), which provides an exemption to employees
25 regulated by section 207 of the federal "Fair Labor Standards Act of
26 1938," 29 U.S.C. s.207, and the Interstate Commerce Act, 49
27 U.S.C. s.501 et al.

28 g. Commencing on January 1, 2020, a training wage of not less
29 than 90 percent of the minimum wage rate otherwise set pursuant to
30 subsection a. of this section may be paid to an employee who is
31 enrolled in an established employer on-the-job or other training
32 program which meets standards set by regulations adopted by the
33 commissioner. The period during which an employer may pay the
34 training wage to the employee shall be the first 120 hours of work
35 after hiring the employee in employment in an occupation in which
36 the employee has no previous similar or related experience. An
37 employer shall not utilize any employee paid the training wage in a
38 manner which causes, induces, encourages or assists any
39 displacement or partial displacement of any currently employed
40 worker, including any previous recipient of the training wage, by
41 reducing hours of a currently employed worker, replacing a current
42 or laid off employee with a trainee, or by relocating operations
43 resulting in a loss of employment at a previous workplace, or in a
44 manner which replaces, supplants, competes with or duplicates any
45 approved apprenticeship program. An employer who pays an
46 employee a training wage shall make a good faith effort to continue
47 to employ the employee after the period of the training wage
48 expires and shall not hire the employee at the training wage unless

1 there is a reasonable expectation that there will be regular
2 employment, paying at or above the effective minimum wage, for
3 the trainee upon the successful completion of the period of the
4 training wage. If the commissioner determines that an employer
5 has made repeated, knowing violations of the provisions of this
6 subsection regarding the payment of a training wage, the
7 commissioner shall suspend the employer's right to pay a training
8 wage for a period set pursuant to regulations adopted by the
9 commissioner, but not less than three years.

10 h. The provisions of this section shall not be construed as
11 prohibiting any political subdivision of the State from adopting an
12 ordinance, resolution, regulation or rule, or entering into any
13 agreement, establishing any standard for vendors, contractors and
14 subcontractors of the subdivision regarding wage rates or overtime
15 compensation which is higher than the standards provided for in
16 this section, and no provision of any other State or federal law
17 establishing a minimum standard regarding wages or other terms
18 and conditions of employment shall be construed as preventing a
19 political subdivision of the State from adopting an ordinance,
20 resolution, regulation or rule, or entering into any agreement,
21 establishing a standard for vendors, contractors and subcontractors
22 of the subdivision which is higher than the State or federal law or
23 which otherwise provides greater protections or rights to employees
24 of the vendors, contractors and subcontractors of the subdivision,
25 unless the State or federal law expressly prohibits the subdivision
26 from adopting the ordinance, resolution, regulation or rule, or
27 entering into the agreement.

28 (cf: P.L.2005, c.70, s.1)

29

30 3. (New section) a. There is established, in but not of the
31 Department of Labor and Workforce Development, the "Task Force
32 on Wages and State Benefits." The task force shall consist of 11
33 members, including the Commissioners of Health, Human Services,
34 Education, Community Affairs, and Labor and Workforce
35 Development, and the State Treasurer, or their designees, all who
36 shall serve ex officio, and five public members appointed by the
37 Governor with the advice and consent of the Senate as follows: one
38 person nominated by an organization which represents the interests
39 of the business community in this State, one person nominated by
40 the New Jersey State AFL-CIO, two persons nominated by
41 organizations representing the interests of low-income individuals,
42 and one person representing the interests of other disadvantaged
43 individuals who rely on services and benefits provided or
44 administered by the State or its instrumentalities. Public members
45 shall be appointed for four-year terms and may be re-appointed for
46 any number of terms. Any public member of the task force may be
47 removed from office by the Governor, for cause, upon notice and
48 opportunity to be heard. Vacancies shall be filled in the same

1 manner as the original appointment for the balance of the unexpired
2 term. A member shall continue to serve upon the expiration of the
3 member's term until a successor is appointed and qualified, unless
4 the member is removed by the Governor.

5 b. Action may be taken by the task force by an affirmative vote
6 of a majority of its members and a majority of the task force shall
7 constitute a quorum for the transaction of any business, for the
8 performance of any duty, or for the exercise of any power of the
9 task force. Members of the task force shall serve without
10 compensation, but may be reimbursed for the actual and necessary
11 expenses incurred in the performance of their duties as members of
12 the task force within the limits of funds appropriated or otherwise
13 made available for that purpose.

14 c. The purpose of the task force is to evaluate how changes in
15 required minimum wage levels pursuant to by P.L. , c. (C.)
16 (pending before the Legislature as this bill) may affect the
17 eligibility of low-income individuals, and other disadvantaged
18 individuals, for a variety of services and benefits provided or
19 administered by the State or its instrumentalities, including, but not
20 limited to, health, human service, childcare, education, housing and
21 tax benefits, and how the combination of changes in minimum wage
22 and eligibility standards may impact the living standards of the
23 individuals and their families. The task force shall produce annual
24 reports of its findings, which shall include any recommendations
25 the task force deems appropriate for adjustments in eligibility
26 standards for the benefits, changes in benefit subsidy rates, and
27 other relevant reforms, to ensure that the combination of minimum
28 wage increases and State services and benefits are coordinated
29 effectively so as to further advance the overall goal of raising the
30 living standards of working families.

31 d. In furtherance of its evaluation, the task force may hold
32 public meetings or hearings within the State and call to its
33 assistance and avail itself of the services of the employees of any
34 other State department, board, or agency which the task force
35 determines possesses relevant data, analytical and professional
36 expertise or other resources which may assist the task force in
37 discharging its duties under this section. Each department, board,
38 or agency of this State is hereby directed, to the extent not
39 inconsistent with law, to cooperate fully with the task force and to
40 furnish such information and assistance as is necessary to
41 accomplish the purposes of this section.

42 e. The task force shall issue its first annual report to the
43 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
44 19.1), to the Legislature not later than September 30, 2019, and
45 make the report available to the public by means including the
46 posting of the report on the web sites of all of the State departments
47 represented on the task force. Each subsequent annual report shall
48 be issued and made available to the public not later than September

1 30 of the respective year and shall include a review of any
2 administrative and legislative actions taken in response to
3 recommendations of previous reports of the task force, together
4 with an evaluation of the effectiveness of the actions in facilitating
5 the overall goal of raising the living standards of working families,
6 and any further recommendation deemed appropriate by the task
7 force.

8
9 4. (New section) a. The commissioner shall, not later than
10 September 30, 2024, issue and post on the Department of Labor and
11 Workforce Development website a report which evaluates the
12 impacts on employers and employees of the credits provided in
13 calendar years 2019 through 2023 to employers for gratuities and
14 tips pursuant to subsection e. of section 5 of P.L 1966, c.113
15 (C.34:11-56a4). The report shall evaluate the adequacy of the
16 minimum wage of employees who customarily and regularly
17 receive gratuities or tips after adjustment for the credits provided to
18 employers pursuant to subsection 5 of P.L.1966, c.113 (C.34:11-
19 56a4).

20 b. The commissioner, in consultation with the State Treasurer,
21 shall, not later than September 30, 2024, issue and post on the
22 Department of Labor and Workforce Development website a report
23 which evaluates the impacts on employers and employees of the tax
24 credits provided in calendar years 2019 through 2023 to employers
25 of employees with impairments pursuant to sections 5 through 9 of
26 P.L. , c. (C.) (pending before the Legislature as this bill).
27 The report will include recommendations regarding the continuation
28 of the tax credits.

29
30 5. (New section) As used in sections 5 through 9 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill):

32 “Commissioner” means the Commissioner of Labor and
33 Workforce Development.

34 “Employee with an impairment” means an employee earning at
35 least the minimum wage on the effective date of P.L. , c. (C.)
36 (pending before the Legislature as this bill) whose work capacity is
37 significantly impaired by age or physical or mental deficiency or
38 injury and who, based on a determination by the State, is found
39 eligible for personal assistance services or prescribed drugs because
40 without such services or drugs the individual would be unable to
41 perform the essential functions of the employment position that the
42 individual holds.

43 “Employer” means any nongovernmental business entity
44 including, but not limited to, a nonprofit organization, a
45 corporation, S corporation, limited liability company, partnership,
46 limited partnership, and sole proprietorship, and shall include all
47 entities related by common ownership or control.

1 “Tax year” means the calendar year ¹or fiscal year¹ in which a
2 taxpayer’s gross income tax or corporation business tax liability is
3 due and payable.

4
5 6. (New section) a. There is established in the Department of
6 Labor and Workforce Development a program, administered by the
7 commissioner, to provide tax credits to employers of employees
8 with impairments. The purpose of the program is to provide tax
9 credits to employers of employees with impairments to help to
10 offset the cost to the employer of any wage increases for those
11 employees caused by the enactment of P.L. , c. (C.)
12 (pending before the Legislature as this bill), including the cost to
13 the employer of corresponding increases in payroll taxes that
14 employer paid on those workers’ wages.

15 b. Prior to January 1, 2025, an employer subject to the
16 provisions of subsections a. and e. of section 5 of P.L 1966, c.113
17 (C.34:11-56a4) may apply to the commissioner for an award of tax
18 credits under this section. A tax credit allowed pursuant to this
19 section shall be in the amount provided in subsections d. and e. of
20 this section against the corporation business tax imposed pursuant
21 to section 5 of P.L.1945, c.162 (C.54:10A-5) or the gross income
22 tax imposed pursuant to the “New Jersey Gross Income Tax Act,”
23 N.J.S.54A:1-1 et seq., whichever of the two taxes is applicable to
24 the employer.

25 c. Prior to January 1, 2028, an employer subject to the
26 provisions of subsections c. and d. of section 5 of P.L 1966, c.113
27 (C.34:11-56a4) may apply to the commissioner for an award of tax
28 credits under this section. A tax credit allowed pursuant to this
29 section shall be in the amount provided in subsections d. and e. of
30 this section against the corporation business tax imposed pursuant
31 to section 5 of P.L.1945, c.162 (C.54:10A-5) or the gross income
32 tax imposed pursuant to the “New Jersey Gross Income Tax Act,”
33 N.J.S.54A:1-1 et seq., whichever of the two taxes is applicable to
34 the employer.

35 d. (1) The final amount of the tax credit provided to an
36 employer for employees with impairments employed by the
37 employer during a tax year shall be a preliminary amount of the tax
38 credit, which is the amount by which the wages and payroll taxes
39 which the employer is required to pay each employee with an
40 impairment the employer employs pursuant to P.L. , c. (C.)
41 (pending before the Legislature of this bill) during the tax year
42 exceeds the amount that the employer actually paid for the
43 employee with an impairment in wages and payroll taxes in the last
44 preceding calendar year (as adjusted pursuant to subparagraph (c) of
45 this paragraph), provided that:

46 (a) if the number of hours worked during the tax year by an
47 employee with an impairment employed by the employer is equal to
48 the number of hours the employee with an impairment worked for

1 the employer during the last preceding calendar year, then the
2 preliminary amount of the tax credit for each of the hours worked
3 shall be in the amount that remains after the amount actually paid
4 for the employee with an impairment in wages and payroll taxes
5 during the last preceding calendar year (as adjusted pursuant to
6 subparagraph (c) of this paragraph) is subtracted from the amount
7 which is required to be paid for the employee with an impairment in
8 payroll taxes and in wages pursuant to the minimum wage rate
9 which applies to the tax year pursuant to P.L. , c. (C.)
10 (pending before the Legislature of this bill);

11 (b) if the number of hours worked during the tax year by an
12 employee with an impairment employed by the employer is greater
13 than the number of hours worked by the employee with an
14 impairment employed by the employer during the last preceding
15 calendar year, then the preliminary amount of the tax credit shall be
16 calculated in two parts and the sum of the two parts shall be the
17 preliminary amount of the tax credit. In the first part of the
18 calculation, regarding the hours worked during the tax year which
19 are equal to the number of hours worked during the last preceding
20 calendar year, the preliminary amount of the tax credit shall be
21 calculated in the same manner as the credit is calculated in
22 subparagraph (a) of this paragraph. In the second part of the
23 calculation, regarding the hours worked during the tax year which
24 are in addition to the number of hours worked during the last
25 preceding calendar year, the preliminary amount of the tax credit
26 for each additional hour shall be calculated in the same manner as
27 the credit is calculated in subparagraph (a) of this paragraph, except
28 that it shall be presumed that the additional number of hours worked
29 by the employee with an impairment would have been paid at the
30 minimum wage rate in effect during the last preceding calendar year
31 (as adjusted pursuant to subparagraph (c) of this paragraph), and the
32 preliminary amount of the tax credit for each of those hours of work
33 shall be calculated by subtracting that presumed rate from the actual
34 minimum wage rate for the tax year; and

35 (c) In making any of the calculations in this paragraph, the actual
36 rate of pay paid to an employee with an impairment in the preceding
37 calendar year shall be increased by whichever is the larger of:

38 (i) the increase in the State minimum wage that would have
39 occurred, for the applicable tax year, if P.L. , c. (C.)
40 (pending before the Legislature as this bill) had not been enacted; or

41 (ii) any increase in the federal minimum hourly wage rate set for
42 the applicable tax year pursuant to section 6(a)(1) of the federal
43 "Fair Labor Standards Act of 1938" (29 U.S.C. s.206(a)(1)).

44 (2) If the number of hours worked during the tax year by an
45 employee with an impairment employed by the employer is less
46 than the number of hours worked during the last preceding calendar
47 year, then the employer shall not be eligible for a tax credit under
48 this section for that tax year for that employee with an impairment.

1 e. An employer may qualify for a tax credit pursuant to
2 sections 5 through 9 of P.L. c. (C.) (pending before the
3 Legislature as this bill) in a taxable year or privilege period
4 beginning on or after January 1, 2019. An employer who qualifies
5 for a tax credit pursuant to this section with respect to hours worked
6 during a tax year may use the tax credit when determining the
7 employer's estimated tax for the purpose of making installment
8 payments of the tax during that tax year. The commissioner shall,
9 upon request, provide assistance to the employer in estimating the
10 likely amount of the tax credit to assist the employer in determining
11 the amount of the tax credit and the installment payments of the tax
12 during a tax year. For tax years 2019 and 2020, the Director of the
13 Division of Taxation may waive in part, or entirely, penalties for
14 underpayment of taxes in connection with installment payments to
15 the extent that the director finds that the underpayment occurred
16 because of a good faith error of the employer in calculating the
17 amount of the credit. Any misclassification of an employee by an
18 employer who knowingly, in applying for the tax credit,
19 falsely represents an employee as an employee with an impairment
20 shall be regarded as a violation of the applicable State tax law and
21 shall be subject to three times the amount of penalties otherwise
22 provided in that law for violations of the law and, for that
23 violation, the penalty shall not be waived, including during tax
24 years 2019 and 2020.

25 f. An employer shall not be eligible for a tax credit pursuant to
26 sections 5 through 9 of P.L. , c. (C.) (pending before the
27 Legislature as this bill) if the commissioner determines that the
28 employer reduced the wages that the employer paid to any
29 employee with an impairment employed by the employer to be
30 eligible for a tax credit under sections 5 through 9 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill) in a
32 future year.

33 g. The combined value of all tax credits approved annually by
34 the commissioner pursuant to this section shall not exceed
35 \$10,000,000 in a calendar year. The commissioner shall annually
36 review and report to the Legislature in accordance with section 2 of
37 P.L.1991, c.164 (C.52:14-19.1) on the sufficiency of the tax credit
38 cap authorized pursuant to this subsection and have any
39 recommendations with respect thereto to the Legislature.

40
41 7. (New section) a. Notwithstanding any provision of the
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
43 seq.) to the contrary, the commissioner, in consultation with the
44 State Treasurer, may adopt, upon filing with the Office of
45 Administrative Law, such regulations that the commissioner deems
46 necessary to implement the provisions of sections 5 through 9 of
47 P.L. , c. (C.) (pending before the Legislature as this bill),
48 which regulations shall be effective for a period not to exceed 180

1 days from the date of the filing. The commissioner shall thereafter
2 amend, adopt, or readopt the regulations in accordance with the
3 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.). The
4 regulations adopted by the commissioner shall include the
5 following:

6 (1) standards and procedures for determining which employees
7 are employees with impairments for the purpose of determining the
8 eligibility of employers for tax credits;

9 (2) any additions to, or modifications of, wage record-keeping
10 requirements needed to calculate the amounts of tax credits under
11 sections 5 through 9 of P.L. , c. (C.) (pending before the
12 Legislature as this bill); ¹**[and]**¹

13 (3) continuing to provide the calculation, for each year, of what
14 the minimum wage would have been under section 5 of P.L.1966
15 (C.34:11-56a4) and paragraph 23 of Article I of the New Jersey
16 Constitution if P.L. , c. (pending before the Legislature as this
17 bill) had not been enacted ¹; and

18 (4) a method for employers to submit certificates of credit to the
19 Division of Taxation pursuant to sections 8 and 9 of P.L. ,
20 c. (C.) (pending before the Legislature as this bill)¹.

21 b. Beginning the year next following the year in which P.L. ,
22 c. (pending before the Legislature as this bill) takes effect and
23 every two years thereafter, the commissioner shall prepare a report
24 concerning the award of tax credits under sections 5 through 9 of
25 P.L. , c. (C.) (pending before the Legislature as this bill),
26 and submit the report to the Governor, and, pursuant to section 2 of
27 P.L.1991, c.164 (C.52:14-19.1), to the Legislature. Each biennial
28 report required under this subsection shall include the names and
29 locations of, and the amount of tax credits allowed to, each
30 employer allowed a tax credit under sections 5 through 9 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill).

32
33 8. (New section) a. The Director of the Division of Taxation in
34 the Department of the Treasury shall allow an employer a credit
35 against the corporation business tax imposed pursuant to section 5
36 of P.L.1945, c.162 (C.54:10A-5) in the amount certified by the
37 Commissioner of Labor and Workforce Development as the
38 taxpayer's tax credit amount pursuant to section 6 of P.L. ,
39 c. (C.) (pending before the Legislature as this bill). To claim
40 the tax credit amount for a privilege period, the taxpayer shall
41 submit to the director the certificate of credit issued for that
42 privilege period by the commissioner pursuant to section 6 of
43 P.L. , c. (C.) (pending before the Legislature as this bill).

44 b. An employer shall apply the credit awarded against the
45 employer's liability under section 5 of P.L.1945, c.162 (C.54:10A-
46 5) for the privilege period during which the director allows the
47 employer a tax credit pursuant to this section. An employer shall
48 not carry forward an unused credit.

1 c. The director shall prescribe the order of priority of the
2 application of the credit allowed under this section and any other
3 credits allowed by law against the tax imposed under section 5 of
4 P.L.1945, c.162 (C.54:10A-5). The amount of the credit applied
5 under this section against the tax imposed pursuant to section 5 of
6 P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with
7 any other credits allowed by law, shall not reduce the tax liability to
8 an amount less than the statutory minimum provided in subsection
9 (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).

10
11 9. (New section) a. The Director of the Division of Taxation in
12 the Department of the Treasury shall allow an employer a credit
13 against the gross income tax imposed pursuant to the “New Jersey
14 Gross Income Tax Act” N.J.S.54A:1-1 et seq. in the amount
15 certified by the Commissioner of Labor and Workforce
16 Development as the taxpayer’s tax credit amount pursuant to
17 section 6 of P.L. , c. (C.) (pending before the Legislature
18 as this bill). To claim the tax credit amount for a taxable year, the
19 taxpayer shall submit to the director the certificate of credit issued
20 for that taxable year by the commissioner pursuant to section 6 of
21 P.L. , c. (C.) (pending before the Legislature as this bill).

22 b. An employer shall apply the credit awarded against the
23 employer’s liability under the “New Jersey Gross Income Tax Act”
24 N.J.S.54A:1-1 et seq. for the taxable year during which the director
25 allows the employer a tax credit pursuant to this section. An
26 employer shall not carry forward an unused credit.

27 c. The director shall prescribe the order of priority of the
28 application of the credit allowed under this section and any other
29 credits allowed by law against the tax imposed under the “New
30 Jersey Gross Income Tax Act” N.J.S.54A:1-1 et seq. The amount
31 of the credit applied under this section against the tax imposed
32 pursuant to the “New Jersey Gross Income Tax Act” N.J.S.54A:1-1
33 et seq. for a taxable year, together with any other credits allowed by
34 law, shall not reduce the tax liability to an amount less than
35 zero. No tax credit shall be allowed pursuant to this section for any
36 wages and payroll taxes included in the calculation of any other tax
37 credit granted pursuant to a claim made on a tax return filed with
38 the director for a period of time that coincides with the taxable year
39 for which a tax credit authorized pursuant to this section is allowed.

40 d. A business entity that is classified as a partnership for
41 federal income tax purposes shall not be allowed the tax credit
42 directly under N.J.S.54A:1-1 et seq., but the amount of credit of the
43 taxpayer in respect of a distributive share of partnership income
44 shall be determined by allocating to the taxpayer that proportion of
45 the credit acquired by the partnership that is equal to the taxpayer’s
46 share, whether or not distributed, of the total distributive income or
47 gain of the partnership for its taxable year ending within or with the
48 taxpayer’s taxable year.

1 A taxpayer that is a New Jersey S corporation shall not be
2 allowed the tax credit directly under N.J.S.54A:1-1 et seq., but the
3 amount of credit of a taxpayer in respect of a pro-rata share of S
4 corporation income shall be determined by allocating to the
5 taxpayer that proportion of the credit acquired by the New Jersey S
6 corporation that is equal to the taxpayer's share, whether or not
7 distributed, of the total pro-rata share of S corporation income of
8 the New Jersey S corporation for its privilege period ending within
9 or with the taxpayer's taxable year.

10

11 10. This act shall take effect immediately.