

CHAPTER 510

AN ACT concerning the responsibility of owners for wage claims against subcontractors and supplementing chapter 11 of Title 34 of the Revised Statutes.

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

C.34:11-67.1 Owners' responsibility for wage claims against subcontractors.

1. a. (1) For any contract entered into on or after January 1, 2020 for construction, reconstruction, demolition, alteration, maintenance, including painting and decorating, or repair in the State other than work on an owner-occupied residence, including, but not limited to, any such work performed under a contract entered into on or after January 1, 2020 under which workers are required by any State law to be paid the prevailing wage rates set pursuant to the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the contractor entering into a contract shall assume, and be responsible for, any debt owed to a worker, or third party on the worker's behalf, incurred by a subcontractor at any tier acting under, by, or for the contractor for the worker's performance of labor under the contract, unless the worker's performance of labor under the contract is pursuant to a collective bargaining agreement to which the employing contractor or subcontractor is signatory, wherein there are lawful remedies by which unpaid wages may be collected.

(2) The contractor's responsibility under the provisions of this section shall extend to unpaid wages plus any interest owed, and shall extend to penalties or liquidated damages.

(3) A contractor or any other person shall not evade, or commit any act that negates, the requirements of this section. This section does not prohibit a contractor or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for responsibility created by the nonpayment of wages by that subcontractor or by a subcontractor at any tier working under that subcontractor.

b. (1) The Commissioner of Labor and Workforce Development may enforce against a contractor the responsibility for unpaid wages created by this section by any action that the commissioner is authorized to undertake regarding responsibility for unpaid wages under the provisions of chapter 11 of Title 34 of the Revised Statutes, unless the worker's performance of labor under the contract is pursuant to a collective bargaining agreement to which the employing contractor or subcontractor is signatory, wherein there are lawful remedies by which unpaid wages may be collected.

(2) A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. s.175a) which includes a union representing any of the workers employed in a project subject to the provisions of this section may bring an action in any court of competent jurisdiction against a contractor or subcontractor at any tier for unpaid wages owed to a worker by the contractor or subcontractor for the performance of any work subject to the provisions of this section, including unpaid wages owed by the contractor, pursuant to subsection a. of this section. The committee shall notify the Department of Labor and Workforce Development when the committee brings the action. The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees. Prior to commencement of an action against a contractor to enforce the responsibility created by subsection a. of this section, the committee shall provide the contractor and subcontractor that employed the worker with at least 30 days' notice by first-class mail. The notice need only describe the general nature of the claim and shall not limit the responsibility of the contractor or preclude subsequent amendments of an action to encompass additional workers employed by the subcontractor, unless the worker's performance of labor under the contract is pursuant to a

collective bargaining agreement to which the employing contractor or subcontractor is signatory, wherein there are lawful remedies by which unpaid wages may be collected.

(3) No party other than the parties indicated in this subsection b. may bring an action against a contractor to enforce the responsibility created by subsection a. of this section.

c. (1) Upon request by a contractor, project manager, or contractor to a subcontractor, the subcontractor shall provide payroll records of its employees who are providing labor on work subject to the provisions of this section, which payroll records shall include all wages. The payroll records shall not be modified except to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number.

(2) Upon request of a contractor to a project manager, contractor, or subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide the contractor information that includes the project name, name and address of the subcontractor, contractor with whom the subcontractor is under contract, anticipated start date, duration, and estimated journeyworker and apprentice hours, and contact information for its subcontractors on the project.

(3) A subcontractor's failure to comply with this section shall not relieve a contractor from any of the obligations contained in this section.

(4) Any subcontractor who fails to provide records or information requested pursuant to this subsection within 14 days of when the request was made shall be subject to a civil penalty in an amount not to exceed \$7,500 for each day the employer fails to provide the requested records or information, collectible by the commissioner in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The commissioner shall have the authority to waive this penalty.

d. Unless otherwise provided by law, property of the contractor may be attached, after trial, for the payment of any judgment received pursuant to this section.

e. An action brought pursuant to this section shall be filed within two years from the date of the occurrence of the incident alleged in the action.

f. This section shall not apply to work performed by an employee of the State, a special district, a city, a county, a city and county, or any political subdivision of the State.

g. For purposes of this section, "contractor" means a contractor that has a direct contractual relationship with an owner and "subcontractor" means a contractor that does not have a direct contractual relationship with an owner, including a contractor that has a contractual relationship with a contractor or with another subcontractor.

h. Nothing in this section shall alter the obligation under any other provision of State law of a contractor to pay in a timely manner a contractor, or of a contractor to pay in a timely manner a subcontractor, or any penalties for failing to do so, except that the contractor may withhold as "disputed" all sums owed if a subcontractor does not provide in a timely manner the information requested under paragraphs (1) and (2) of subsection c. of this section, until that information is provided.

C.34:11-67.2 Severability.

2. If any clause, sentence, paragraph, section or other part of this act shall be adjudged by any court of competent jurisdiction to be invalid, including any judgment made pursuant to R.S.1:1-10 that the part is unconstitutional, invalid, or inoperative, the judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, section or other part directly involved in the controversy in which the judgment shall have been rendered.

3. This act shall take effect immediately.

Approved January 21, 2020.