

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4009

with Assembly Floor Amendments
(Proposed by Assemblyman CARABALLO)

ADOPTED: MARCH 15, 2007

These Assembly amendments revise the penalties and enforcement procedures for violations of the bill's prohibition against the misclassification of construction employees as independent contractors and remove the bill's applicability to misclassification for the purposes of workers' compensation.

The amendments revise the criminal penalties provided for violations of the provisions of the bill to provide that any knowing violation is a crime of the second degree if the contract is for \$75,000 or more, a crime of the third degree if the contract is for between \$2,500 and \$75,000, and a crime of the fourth degree if the contract is for \$2,500 or less. These criminal penalties are identical to the criminal penalties provided in section 97 of P.L.1999, c.440 (C.2C:21-34) for a knowing failure to pay the wages required under the prevailing wage law. The amendments provide that in any violation of the bill, even a violation which is not done knowingly or willfully, the violator is guilty of a disorderly persons offense, and may, in addition, be subject to administrative penalties of up to \$2,500 for a first violation and up to \$5,000 for each subsequent violation.

The amendments provide that the bill's requirement that the Commissioner of Labor and Workforce Development issue a stop work order for a violation of the act apply only to second and subsequent violations of the act. Under the amendments, a stop work order would apply only to the worksites at which a second violation occurs and to all worksites of the violator for a third or subsequent violation. They provide the commissioner the option, for any violation, of suspending the registration of a contractor pending a hearing. The amendments provide that the commissioner has the authority to assess civil penalties for non-compliance with the stop work orders, but is not required to do so.

The amendments specify that debarment from public works contracting would only apply to cases of violations done knowingly and that debarment would be for three years and remove the provision that debarment be for two years if the violation is done recklessly.