

5847--A

2009-2010 Regular Sessions

I N S E N A T E

June 11, 2009

Introduced by Sens. ONORATO, FOLEY, BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to enacting the "New York state construction industry fair play act"; and to amend the workers' compensation law, the tax law and the state finance law, in relation to creating the construction industry classification fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The labor law is amended by adding a new article 25-B to
2 read as follows:

3 ARTICLE 25-B

4 THE NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT

5 SECTION 861. SHORT TITLE.

6 861-A. LEGISLATIVE FINDINGS AND INTENT.

7 861-B. DEFINITIONS.

8 861-C. PRESUMPTION OF EMPLOYMENT IN THE CONSTRUCTION INDUSTRY.

9 861-D. NOTICE TO PERSONS RECEIVING REMUNERATION FROM CONTRACTORS
10 AND SUBCONTRACTORS.

11 861-E. VIOLATIONS AND PENALTIES.

12 861-F. ADVISORY COMMITTEE ON EMPLOYMENT CLASSIFICATION.

13 861-G. RETALIATION.

14 S 861. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
15 THE "NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT".

16 S 861-A. LEGISLATIVE FINDINGS AND INTENT. THE LEGISLATURE HEREBY FINDS
17 AND DECLARES THAT NEW YORK STATE'S CONSTRUCTION INDUSTRY IS EXPERIENCING
18 DANGEROUS LEVELS OF EMPLOYEE MISCLASSIFICATION FRAUD. UNSCRUPULOUS
19 EMPLOYERS ARE INTENTIONALLY REPORTING EMPLOYEES AS INDEPENDENT CONTRAC-
20 TORS TO STATE AND FEDERAL AUTHORITIES OR WORKERS' COMPENSATION CARRIERS

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 IN RECORD NUMBERS. IN ADDITION, THERE HAS BEEN AN EXPLOSION OF EMPLOYERS
2 WHO OPERATE IN THE UNDERGROUND ECONOMY AND FAIL TO REPORT ALL OR A SIZA-
3 BLE PORTION OF THEIR WORKERS.

4 THE LEGISLATURE HEREBY FINDS AND DECLARES THAT RECENT STUDIES OF NEW
5 YORK CITY'S CONSTRUCTION INDUSTRY ALONE SUGGESTS THAT AS MANY AS FIFTY
6 THOUSAND NEW YORK CITY CONSTRUCTION WORKERS -- NEARLY ONE IN FOUR -- ARE
7 EITHER MISCLASSIFIED AS INDEPENDENT CONTRACTORS OR ARE EMPLOYED BY
8 CONSTRUCTION CONTRACTORS COMPLETELY OFF THE BOOKS. CONSTRUCTION INDUSTRY
9 FRAUD REDUCES GOVERNMENT REVENUE, SHIFTS TAX AND WORKERS' COMPENSATION
10 INSURANCE COSTS TO LAW-ABIDING EMPLOYEES, LOWERS WORKING CONDITIONS AND
11 STEALS JOBS FROM LEGITIMATE EMPLOYERS AND THEIR EMPLOYEES.

12 IN TWO THOUSAND FIVE ALONE, IT WAS ESTIMATED THAT THE LOST PAYROLL
13 TAXES AND SOCIAL INSURANCE PREMIUM PAYMENTS IN NEW YORK CITY DUE TO
14 CLASSIFICATION FRAUD EXCEEDED TWO HUNDRED SEVENTY MILLION DOLLARS. IN
15 ADDITION THE GOVERNMENT AND PROVIDERS WERE FORCED TO PAY AN ADDITIONAL
16 ONE HUNDRED FORTY-EIGHT MILLION DOLLARS FOR HEALTH CARE COSTS FRAUDU-
17 LENTLY SHIFTED FROM EMPLOYERS. FINALLY, IT WAS ESTIMATED THAT THE
18 GOVERNMENT WAS CHEATED OUT OF ALMOST SEVENTY MILLION DOLLARS IN LOST
19 INCOME TAXES DUE. MISCLASSIFICATION FRAUD CREATES SIGNIFICANT PROBLEMS
20 FOR WORKERS. THESE WORKERS ARE NOT COVERED BY WORKERS' COMPENSATION,
21 UNEMPLOYMENT INSURANCE, OR TEMPORARY DISABILITY. THEY ARE LIABLE FOR
22 TAXES THEY DO NOT OWE AND LOSE OVERTIME AND HEALTH BENEFITS. FINALLY,
23 UNSCRUPULOUS CONTRACTORS WHO ENGAGE IN FRAUD ARE ABLE TO UNDERCUT LAW-A-
24 BIDDING CONTRACTORS BY AS MUCH AS THIRTY PERCENT IN THE PRICE OF
25 CONSTRUCTION SERVICES.

26 THEREFORE, THE LEGISLATURE HEREBY FINDS AND DECLARES THAT GOVERNMENT
27 HAS AN OBLIGATION TO CURB THIS UNDERGROUND ECONOMY, ENFORCE LONG-STAND-
28 ING EMPLOYMENT LAWS, ENSURE COMPLIANCE WITH ESSENTIAL SOCIAL INSURANCE
29 PROTECTIONS AND ELIMINATE THE UNFAIR COMPETITIVE ADVANTAGE FROM CONTRAC-
30 TORS IN THE UNDERGROUND ECONOMY BY AND THROUGH THE ENACTMENT OF THE NEW
31 YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT.

32 S 861-B. DEFINITIONS. AS USED IN THIS ARTICLE:

33 1. "CONSTRUCTION" MEANS CONSTRUCTING, RECONSTRUCTING, ALTERING, MAIN-
34 TAINING, MOVING, REHABILITATING, REPAIRING, RENOVATING OR DEMOLITION OF
35 ANY BUILDING, STRUCTURE, OR IMPROVEMENT, OR RELATING TO THE EXCAVATION
36 OF OR OTHER DEVELOPMENT OR IMPROVEMENT TO LAND.

37 2. "CONTRACTOR" MEANS ANY SOLE PROPRIETOR, PARTNERSHIP, FIRM, CORPO-
38 RATION, LIMITED LIABILITY COMPANY, ASSOCIATION OR OTHER LEGAL ENTITY
39 PERMITTED BY LAW TO DO BUSINESS WITHIN THE STATE OF NEW YORK WHO ENGAGES
40 IN CONSTRUCTION AS DEFINED IN THIS ARTICLE.

41 3. "CONTRACTOR" INCLUDES A GENERAL CONTRACTOR AND A SUBCONTRACTOR.

42 4. "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR.

43 5. "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR.

44 6. "EMPLOYER" MEANS ANY CONTRACTOR THAT EMPLOYS AN INDIVIDUAL CLASSI-
45 FIED AS AN EMPLOYEE UNDER THIS ARTICLE.

46 S 861-C. PRESUMPTION OF EMPLOYMENT IN THE CONSTRUCTION INDUSTRY. 1.
47 ANY PERSON PERFORMING SERVICES FOR A CONTRACTOR SHALL BE CLASSIFIED AS
48 AN EMPLOYEE UNLESS ALL OF THE FOLLOWING CRITERIA ARE MET:

49 (A) THE INDIVIDUAL IS FREE FROM CONTROL AND DIRECTION IN PERFORMING
50 THE JOB, BOTH UNDER HIS OR HER CONTRACT AND IN FACT;

51 (B) THE SERVICE MUST BE PERFORMED OUTSIDE THE CONTRACTOR'S USUAL
52 COURSE OF BUSINESS; AND

53 (C) THE INDIVIDUAL MUST BE CUSTOMARILY ENGAGED IN AN INDEPENDENTLY
54 ESTABLISHED TRADE, OCCUPATION, PROFESSION, OR BUSINESS THAT IS SIMILAR
55 TO THE SERVICE AT ISSUE.

1 2. THE FAILURE TO WITHHOLD FEDERAL OR STATE INCOME TAXES OR TO PAY
2 UNEMPLOYMENT COMPENSATION CONTRIBUTIONS OR WORKERS' COMPENSATION PREMI-
3 UMS WITH RESPECT TO AN INDIVIDUAL'S WAGES SHALL NOT BE CONSIDERED IN
4 MAKING A DETERMINATION UNDER THIS SECTION.

5 3. AN INDIVIDUAL'S ACT OF SECURING WORKERS' COMPENSATION INSURANCE
6 WITH A CARRIER AS A SOLE PROPRIETOR OR PARTNERSHIP SHALL NOT BE CONSID-
7 ERED IN MAKING A DETERMINATION UNDER THIS SECTION.

8 S 861-D. NOTICE TO PERSONS RECEIVING REMUNERATION FROM CONTRACTORS AND
9 SUBCONTRACTORS. 1. CONTRACTORS SHALL PROVIDE TO ALL INDIVIDUALS RECEIV-
10 ING REMUNERATION TO PERFORM CONSTRUCTION WORK A WRITTEN NOTICE, PROVIDED
11 BY THE COMMISSIONER, THAT DESCRIBES THE RESPONSIBILITY OF INDEPENDENT
12 CONTRACTORS TO PAY TAXES REQUIRED BY STATE AND FEDERAL LAW AND THE
13 RIGHTS OF EMPLOYEES TO WORKERS' COMPENSATION, UNEMPLOYMENT BENEFITS,
14 MINIMUM WAGE, OVERTIME AND OTHER FEDERAL AND STATE WORKPLACE
15 PROTECTIONS. SUCH INFORMATION SHALL ALSO CONTAIN CONTACT INFORMATION FOR
16 SUCH PERSONS TO FILE COMPLAINTS OR INQUIRE WITH THE COMMISSIONER ABOUT
17 EMPLOYMENT CLASSIFICATION STATUS. IN ADDITION, THE NOTICE SHALL CONTAIN
18 THE ADDRESS TO THE WEB SITE DESCRIBED IN SUBDIVISION THREE OF THIS
19 SECTION, THE PROTECTIONS AGAINST RETALIATION IN THIS ARTICLE AND THE
20 PENALTIES IN THIS ARTICLE IF THE CONTRACTOR HAS FAILED TO PROPERLY CLAS-
21 SIFY THE PERSON AS AN EMPLOYEE.

22 2. THE INFORMATION IN SUBDIVISION ONE OF THIS SECTION SHALL BE
23 PROVIDED IN SPANISH OR OTHER LANGUAGES REQUIRED BY THE COMMISSIONER.

24 3. WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS ARTICLE, THE
25 COMMISSIONER SHALL CREATE THE NOTICE DESCRIBED IN SUBDIVISION ONE OF
26 THIS SECTION. IN ADDITION, WITHIN THE SAME TIME PERIOD, THE COMMISSIONER
27 SHALL CREATE A WEB SITE THAT CONTAINS THE SAME INFORMATION AND THE
28 NOTICE. SUCH NOTICE SHALL BE PROVIDED TO CONTRACTORS THROUGH DOWNLOADING
29 FROM THE WEB SITE.

30 4. CONTRACTORS IN THEIR AGREEMENTS WITH ALL SUBCONTRACTORS SHALL
31 REQUIRE THEM TO:

32 (A) PROVIDE THE NOTICE DESCRIBED IN THIS SECTION, AND

33 (B) PLACE THE NOTICE REQUIREMENT IN CONTRACTS WITH ANY LOWER TIER
34 SUBCONTRACTORS.

35 5. CONTRACTORS WHO VIOLATE THIS SECTION SHALL BE SUBJECT TO THE
36 FOLLOWING CIVIL PENALTIES:

37 (A) TWO THOUSAND DOLLARS PER INDIVIDUAL WHO IS NOT NOTIFIED; AND

38 (B) FIVE THOUSAND DOLLARS PER CONTRACT WITH A SUBCONTRACTOR OR LOWER
39 TIER SUBCONTRACTOR THAT DOES NOT CONTAIN THE NOTICE REQUIREMENT.

40 S 861-E. VIOLATION AND PENALTIES. 1. ANY CONTRACTOR WHO FAILS TO PROP-
41 ERLY CLASSIFY AN INDIVIDUAL AS AN EMPLOYEE AS PROVIDED UNDER SECTION
42 EIGHT HUNDRED SIXTY-ONE-C OF THIS ARTICLE SHALL BE SUBJECT TO THE CIVIL
43 AND CRIMINAL PENALTIES PROVIDED UNDER THIS SECTION.

44 2. FOR THE PURPOSES OF THIS SECTION, THE TERM "WILLFULLY VIOLATES"
45 MEANS A CONTRACTOR KNEW OR SHOULD HAVE KNOWN THAT HIS OR HER CONDUCT WAS
46 PROHIBITED BY THIS SECTION.

47 3. ANY CONTRACTOR WHO WILLFULLY VIOLATES SECTION EIGHT HUNDRED SIXTY-
48 ONE-C OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO TWEN-
49 TY-FIVE HUNDRED DOLLARS FOR THE FIRST VIOLATION PER EMPLOYEE, AND TO A
50 CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT
51 VIOLATION PER EMPLOYEE.

52 4. IF THE CONTRACTOR IS A CORPORATION, ANY OFFICER OF SUCH CORPORATION
53 OR SHAREHOLDER WHO OWNS OR CONTROLS AT LEAST TEN PERCENT OF THE
54 OUTSTANDING STOCK OF SUCH CORPORATION WHO KNOWINGLY PERMITS THE CORPO-
55 RATION TO WILLFULLY VIOLATE ANY PROVISION OF THIS ARTICLE SHALL BE

1 SUBJECT TO THE SAME CIVIL PENALTY PROVIDED UNDER THIS ARTICLE FOR A
2 VIOLATION OF SUCH PROVISION.

3 5. IF ANY CONTRACTOR WILLFULLY VIOLATES SECTION EIGHT HUNDRED
4 SIXTY-ONE-C OF THIS ARTICLE AND SUCH VIOLATION RESULTS IN A FAILURE BY
5 THE CONTRACTOR TO PAY UNEMPLOYMENT INSURANCE TAX, WORKERS' COMPENSATION,
6 OR CORPORATE OR PERSONAL INCOME TAX FOR THE MISCLASSIFICATION OF AN
7 EMPLOYEE, THE CONTRACTOR SHALL BE SUBJECT, AT THE DISCRETION OF THE
8 COMMISSIONER, TO ADDITIONAL CIVIL PENALTIES AS FOLLOWS:

9 (A) FOR FAILURE TO PAY UNEMPLOYMENT INSURANCE TAX, THE PENALTIES
10 IMPOSED BY SECTION FIVE HUNDRED SEVENTY OF THIS CHAPTER,

11 (B) FOR FAILURE TO PAY WORKERS' COMPENSATION INSURANCE, THE PENALTIES
12 IMPOSED BY SECTION TWENTY-FIVE AND TWO HUNDRED TWENTY OF THE WORKERS'
13 COMPENSATION LAW, AND

14 (C) FOR FAILURE TO PAY CORPORATE OR PERSONAL INCOME TAX, THE PENALTIES
15 IMPOSED BY SECTIONS SIX HUNDRED EIGHTY-FIVE AND ONE THOUSAND EIGHTY-FIVE
16 OF THE TAX LAW.

17 6. IN ADDITION TO ANY CIVIL PENALTIES IMPOSED UNDER THIS ARTICLE, A
18 CONTRACTOR WHO WILLFULLY VIOLATES SECTION EIGHT HUNDRED SIXTY-ONE-C OF
19 THIS ARTICLE SHALL BE GUILTY OF A MISDEMEANOR AND UPON CONVICTION, SHALL
20 BE PUNISHED FOR A FIRST OFFENSE BY IMPRISONMENT FOR NOT MORE THAN THIRTY
21 DAYS AND FOR A SUBSEQUENT OFFENSE, BY IMPRISONMENT FOR NOT MORE THAN
22 SIXTY DAYS.

23 7. ANY CONTRACTOR WHO HAS BEEN CONVICTED OF A MISDEMEANOR OR AGAINST
24 WHOM A FINAL CIVIL DETERMINATION HAS BEEN RENDERED FOR A WILLFUL
25 VIOLATION OF SECTION EIGHT HUNDRED SIXTY-ONE-C OF THIS ARTICLE SHALL BE
26 INELIGIBLE TO SUBMIT A BID ON OR BE AWARDED ANY PUBLIC CONTRACT WITH THE
27 STATE, ANY MUNICIPAL CORPORATION, PUBLIC BENEFIT CORPORATION OR PUBLIC
28 BODY FOR A PERIOD OF UP TO FIVE YEARS FROM THE DATE OF SUCH CONVICTION
29 OR FINAL DETERMINATION.

30 8. ANY EMPLOYEE AGGRIEVED BY A VIOLATION OF THIS ARTICLE, OR AN ORGAN-
31 IZATION REPRESENTING AN AGGRIEVED EMPLOYEE, MAY FILE A CIVIL ACTION TO
32 RECOVER LOST WAGES, TREBLE DAMAGES, ATTORNEY'S FEES AND COSTS WITHIN
33 THREE YEARS FROM THE DATE OF SUCH VIOLATION.

34 9. A PENALTY IMPOSED UNDER THIS SECTION AGAINST A CONSTRUCTION INDUS-
35 TRY EMPLOYER SHALL BE IN EFFECT AGAINST ANY SUCCESSOR CORPORATION OR
36 BUSINESS ENTITY THAT HAS ONE OR MORE OF THE SAME PRINCIPALS OR OFFICERS
37 AS THE EMPLOYER AGAINST WHOM THE PENALTY WAS IMPOSED.

38 10. NOTHING IN THIS SECTION SHALL LIMIT THE AVAILABILITY OF OTHER
39 REMEDIES AT LAW OR IN EQUITY FOR A VIOLATION OF THIS ARTICLE.

40 S 861-F. ADVISORY COMMITTEE ON EMPLOYMENT CLASSIFICATION. 1. THERE IS
41 HEREBY ESTABLISHED THE ADVISORY COMMITTEE ON EMPLOYMENT CLASSIFICATION.
42 THE PURPOSE OF SUCH ADVISORY COMMITTEE IS TO DEVELOP RECOMMENDATIONS FOR
43 A COMPREHENSIVE AND STRATEGIC STATEWIDE APPROACH TO ADDRESSING THE PROB-
44 LEM OF EMPLOYEE MISCLASSIFICATION AND TO ENSURE CONTRACTOR COMPLIANCE
45 WITH THE "NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT".

46 2. THE ADVISORY COMMITTEE SHALL BE COMPOSED OF THE COMMISSIONER OR A
47 DESIGNEE; THE ATTORNEY GENERAL OR A DESIGNEE; THE COMMISSIONER OF TAXA-
48 TION AND FINANCE OR A DESIGNEE; THE CHAIR OF THE WORKERS' COMPENSATION
49 BOARD OR A DESIGNEE; THIRTEEN MEMBERS WHO SHALL BE APPOINTED BY THE
50 GOVERNOR AND SHALL SERVE AT HIS PLEASURE AS FOLLOWS: THREE REPRESENT-
51 TATIVES FROM THREE DIFFERENT BUILDING TRADE UNIONS; THREE REPRESENT-
52 TATIVES OF THE NEW YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF
53 INDUSTRIAL ORGANIZATIONS; THREE REPRESENTATIVES OF THE BUSINESS COMMUNI-
54 TY; ONE REPRESENTATIVE OF RESIDENTIAL DEVELOPERS; ONE REPRESENTATIVE OF
55 RESIDENTIAL CONSTRUCTION CONTRACTORS; ONE REPRESENTATIVE OF COMMERCIAL

1 DEVELOPERS; AND ONE REPRESENTATIVE OF COMMERCIAL CONSTRUCTION CONTRAC-
2 TORS.

3 3. THE COMMISSIONER SHALL SERVE AS THE CHAIR OF THE ADVISORY COMMIT-
4 TEE. ALL PUBLIC MEMBERS OF THE ADVISORY COMMITTEE SHALL SERVE WITHOUT
5 COMPENSATION. VACANCIES ON THE ADVISORY COMMITTEE SHALL BE FILLED IN THE
6 SAME MANNER AS THE ORIGINAL APPOINTMENT.

7 4. THE ADVISORY COMMITTEE SHALL BE AUTHORIZED TO:

8 (A) MAKE RECOMMENDATIONS TO THE DEPARTMENT, THE ATTORNEY GENERAL, THE
9 DEPARTMENT OF TAXATION AND FINANCE AND THE WORKERS' COMPENSATION BOARD
10 WITH RESPECT TO SYNCHRONIZING EACH RESPECTIVE DEPARTMENT'S REGULATIONS
11 AND POLICIES REGARDING EMPLOYEE MISCLASSIFICATION;

12 (B) MAKE RECOMMENDATIONS TO ENHANCE MECHANISMS FOR IDENTIFYING EMPLOY-
13 EE MISCLASSIFICATION WHERE IT DOES OCCUR; AND

14 (C) WORK WITH BUSINESS, LABOR AND COMMUNITY GROUPS TO DEVELOP EDUCA-
15 TIONAL MATERIALS THAT DISTINGUISH THE DIFFERENCE BETWEEN AN INDEPENDENT
16 CONTRACTOR AND AN EMPLOYEE.

17 5. THE ADVISORY COMMITTEE SHALL ISSUE A REPORT ANNUALLY TO THE GOVER-
18 NOR AND LEGISLATURE ON THE STATUS OF IMPLEMENTATION OF THE NEW YORK
19 STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT, TO INCLUDE PUBLICLY AVAILABLE
20 INFORMATION REGARDING: CASES BROUGHT, WAGES AND TAXES RECOVERED ON
21 BEHALF OF THE STATE, OUTCOMES OF CASES, LEGAL OR ADMINISTRATIVE BARRIERS
22 TO SUCCESSFUL IMPLEMENTATION, A REVIEW OF THE PROCESS USED TO ADJUDICATE
23 MISCLASSIFICATION CASES, AND PROPOSALS FOR ANY ADDITIONAL LEGISLATIVE
24 ACTION THAT MAY BE NEEDED TO ENHANCE THE STATE'S EFFORTS TO ADDRESS
25 EMPLOYEE MISCLASSIFICATION IN THE CONSTRUCTION INDUSTRY IN THE STATE.

26 6. THE ADVISORY COMMITTEE MAY REQUEST ANY DEPARTMENT, OFFICE, DIVISION
27 OR AGENCY OF THE STATE TO PROVIDE DATA AND OTHER INFORMATION, PERSONNEL
28 OR ASSISTANCE AVAILABLE TO SUCH AGENCY AS THE ADVISORY COMMITTEE DEEMS
29 NECESSARY TO DISCHARGE ITS DUTIES UNDER THIS ARTICLE SUBJECT TO CONFID-
30 DENTIALITY PROVISIONS UNDER LAW. EACH DEPARTMENT, OFFICE, DIVISION OR
31 AGENCY OF THE STATE SHALL, TO THE EXTENT NOT INCONSISTENT WITH LAW,
32 COOPERATE FULLY WITH THE ADVISORY COMMITTEE AND FURNISH SUCH ASSISTANCE
33 ON AS TIMELY A BASIS AS IS NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS
34 ARTICLE. THE ADVISORY COMMITTEE MAY CONSULT WITH EXPERTS OR OTHER KNOW-
35 LEDGEABLE INDIVIDUALS IN THE PUBLIC OR PRIVATE SECTOR IN CARRYING OUT
36 ITS PURPOSE AND DUTIES.

37 S 861-G. RETALIATION. 1. IT IS A VIOLATION OF THIS ARTICLE FOR AN
38 EMPLOYER OR ANY AGENT OF AN EMPLOYER, TO RETALIATE THROUGH DISCHARGE OR
39 IN ANY OTHER MANNER AGAINST ANY PERSON IN THE TERMS AND CONDITIONS OF
40 HIS OR HER EMPLOYMENT FOR EXERCISING ANY RIGHTS GRANTED UNDER THIS ARTI-
41 CLE FOR:

42 (A) MAKING A COMPLAINT TO AN EMPLOYER, CO-WORKER OR TO A PUBLIC BODY
43 THAT RIGHTS GUARANTEED UNDER THIS ARTICLE HAVE BEEN VIOLATED;

44 (B) CAUSING TO BE INSTITUTED ANY PROCEEDING UNDER OR RELATED TO THIS
45 ARTICLE; OR

46 (C) PROVIDING INFORMATION TO, OR TESTIFYING BEFORE, ANY PUBLIC BODY
47 CONDUCTING AN INVESTIGATION, HEARING OR INQUIRY INTO ANY SUCH VIOLATION
48 OF A LAW, RULE OR REGULATION BY SUCH EMPLOYER.

49 2. ANY ACT OF RETALIATION UNDER THIS SECTION SHALL SUBJECT AN EMPLOYER
50 TO THE CIVIL PENALTIES UNDER SECTION EIGHT HUNDRED SIXTY-ONE-E OF THIS
51 ARTICLE, OR TO A PRIVATE CAUSE OF ACTION, OR BOTH.

52 S 2. Paragraph (b) of subdivision 1 of section 511 of the labor law is
53 amended by adding a new subparagraph 1-b to read as follows:

54 (1-B) AS AN EMPLOYEE IN THE CONSTRUCTION INDUSTRY UNLESS THE PRESUMP-
55 TION OF EMPLOYMENT CAN BE OVERCOME, AS PROVIDED UNDER SECTION EIGHT
56 HUNDRED SIXTY-ONE-C OF THIS CHAPTER,

1 S 3. The opening paragraph of subdivision 4 of section 2 of the work-
2 ers' compensation law, as amended by chapter 205 of the laws of 1993, is
3 amended to read as follows:

4 "Employee" means a person engaged in one of the occupations enumerated
5 in section three or who is in the service of an employer whose principal
6 business is that of carrying on or conducting a hazardous employment
7 upon the premises or at the plant, or in the course of his employment
8 away from the plant of his employer; "EMPLOYEE" SHALL ALSO MEAN FOR THE
9 PURPOSES OF THIS CHAPTER ANY INDIVIDUAL PERFORMING SERVICES FOR A
10 CONTRACTOR WHO DOES NOT OVERCOME THE PRESUMPTION OF EMPLOYMENT AS
11 PROVIDED UNDER SECTION EIGHT HUNDRED SIXTY-ONE-C OF THE LABOR LAW;
12 "employee" shall also mean for the purposes of this chapter civil
13 defense volunteers who are personnel of volunteer agencies sponsored or
14 authorized by a local office under regulations of the civil defense
15 commission, to the extent of the provisions of groups seventeen and
16 nineteen; "employee" shall at the election of a municipal corporation
17 made pursuant to local law duly enacted also mean a member of an auxil-
18 iary police organization authorized by local law; and for the purposes
19 of this chapter only a newspaper carrier under the age of eighteen years
20 as defined in section thirty-two hundred twenty-eight of the education
21 law, and shall not include domestic servants except as provided in
22 section three of this chapter, and except where the employer has elected
23 to bring such employees under the law by securing compensation in
24 accordance with the terms of section fifty of this chapter. The term
25 "employee" shall not include persons who are members of a supervised
26 amateur athletic activity operated on a non-profit basis, provided that
27 said members are not also otherwise engaged or employed by any person,
28 firm or corporation participating in said athletic activity, nor shall
29 it include the spouse or minor child of an employer who is a farmer
30 unless the services of such spouse or minor child shall be engaged by
31 said employer under an express contract of hire nor shall it include an
32 executive officer of a corporation who at all times during the period
33 involved owns all of the issued and outstanding stock of the corporation
34 and holds all of the offices pursuant to paragraph (e) of section seven
35 hundred fifteen of the business corporation law or two executive offi-
36 cers of a corporation who at all times during the period involved
37 between them own all of the issued and outstanding stock of such corpo-
38 ration and hold all such offices except as provided in subdivision six
39 of section fifty-four of this chapter provided, however, that where
40 there are two executive officers of a corporation each officer must own
41 at least one share of stock, nor shall it include a self-employed person
42 or a partner of a partnership as defined in section ten of the partner-
43 ship law who is not covered under a compensation insurance contract or a
44 certificate of self-insurance as provided in subdivision eight of
45 section fifty-four of this chapter, nor shall it include farm laborers
46 except as provided in group fourteen-b of section three of this chapter.
47 If a farm labor contractor recruits or supplies farm laborers for work
48 on a farm, such farm laborers shall for the purposes of this chapter be
49 deemed to be employees of the owner or lessee of such farm. The term
50 "employee" shall not include baby sitters as defined in subdivision
51 three of section one hundred thirty-one and subdivision three of section
52 one hundred thirty-two of the labor law or minors fourteen years of age
53 or over engaged in casual employment consisting of yard work and house-
54 hold chores in and about a one family owner-occupied residence or the
55 premises of a non-profit, non-commercial organization, not involving the
56 use of power-driven machinery. The term "employee" shall not include

1 persons engaged by the owner in casual employment consisting of yard
2 work, household chores and making repairs to or painting in and about a
3 one-family owner-occupied residence. The term "employee" shall not
4 include the services of a licensed real estate broker or sales associate
5 if it be proven that (a) substantially all of the remuneration (whether
6 or not paid in cash) for the services performed by such broker or sales
7 associate is directly related to sales or other output (including the
8 performance of services) rather than to the number of hours worked; (b)
9 the services performed by the broker or sales associate are performed
10 pursuant to a written contract executed between such broker or sales
11 associate and the person for whom the services are performed within the
12 past twelve to fifteen months; and (c) the written contract provided for
13 in paragraph (b) herein was not executed under duress and contains the
14 following provisions:

15 S 4. Paragraph 1 of subsection (a) of section 671 of the tax law, as
16 amended by chapter 760 of the laws of 1992, is amended to read as
17 follows:

18 (1) Every employer maintaining an office or transacting business with-
19 in this state and making payment of any wages taxable under this
20 article, INCLUDING AN EMPLOYER AS DEFINED IN SUBDIVISION SIX OF SECTION
21 EIGHT HUNDRED SIXTY-ONE-B OF THE LABOR LAW, shall deduct and withhold
22 from such wages for each payroll period a tax computed in such manner as
23 to result, so far as practicable, in withholding from the employee's
24 wages during each calendar year an amount substantially equivalent to
25 the tax reasonably estimated to be due under this article resulting from
26 the inclusion in the employee's New York adjusted gross income or New
27 York source income of his wages received during such calendar year. The
28 method of determining the amount to be withheld shall be prescribed by
29 regulations of the commissioner, with due regard to the New York with-
30 holding exemptions of the employee and the sum of any credits allowable
31 against his tax.

32 S 5. The state finance law is amended by adding a new section 99-t to
33 read as follows:

34 S 99-T. CONSTRUCTION INDUSTRY CLASSIFICATION FUND. 1. THERE IS HEREBY
35 ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE
36 COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT IN THE MISCELLANEOUS
37 SPECIAL REVENUE FUND TO BE KNOWN AS THE "CONSTRUCTION INDUSTRY CLASSI-
38 FICATION FUND".

39 2. THE CONSTRUCTION INDUSTRY CLASSIFICATION FUND SHALL CONSIST OF ALL
40 MONEYS RECEIVED BY THE STATE AS FEES AND CIVIL PENALTIES PURSUANT TO
41 ARTICLE TWENTY-FIVE-B OF THE LABOR LAW.

42 3. SUCH FUND SHALL BE SUBJECT TO APPROPRIATION BY THE DEPARTMENT OF
43 LABOR FOR ADMINISTRATION, INVESTIGATION AND OTHER EXPENSES INCURRED IN
44 CARRYING OUT ITS POWERS AND DUTIES PURSUANT TO ARTICLE TWENTY-FIVE-B OF
45 THE LABOR LAW AND THE DEPARTMENT MAY HIRE AS MANY INVESTIGATORS AND
46 OTHER PERSONNEL AS MAY BE NECESSARY TO CARRY OUT SUCH DUTIES. ANY MONEYS
47 IN THE FUND AT THE END OF THE FISCAL YEAR IN EXCESS OF ANY MONEYS NECES-
48 SARY FOR THE DEPARTMENT OF LABOR TO CARRY OUT ITS POWERS AND DUTIES
49 UNDER ARTICLE TWENTY-FIVE-B SHALL BE AVAILABLE TO THE DEPARTMENT OF
50 LABOR FOR THE NEXT FISCAL YEAR FOR ANY OF THE DEPARTMENT OF LABOR'S
51 DUTIES UNDER ARTICLE TWENTY-FIVE-B OF THE LABOR LAW.

52 S 6. This act shall take effect on the sixtieth day after it shall
53 have become a law.