

6267

I N S E N A T E

January 18, 2012

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to enacting the "New York state commercial goods transportation industry fair play act"; and to amend the workers' compensation law, in relation to the definition of employee

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-C to
2 read as follows:

3 ARTICLE 25-C

4 THE NEW YORK STATE COMMERCIAL GOODS TRANSPORTATION INDUSTRY
5 FAIR PLAY ACT

6 SECTION 862. SHORT TITLE.

7 862-A. DEFINITIONS.

8 862-B. PRESUMPTION OF EMPLOYMENT IN THE COMMERCIAL GOODS TRANS-
9 PORTATION INDUSTRY.

10 862-C. NOTICE TO PERSONS RECEIVING REMUNERATION FROM COMMERCIAL
11 GOODS TRANSPORTATION CONTRACTORS AND COMMERCIAL GOODS
12 TRANSPORTATION SUBCONTRACTORS.

13 862-D. VIOLATIONS AND PENALTIES.

14 862-E. RETALIATION.

15 S 862. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
16 THE "NEW YORK STATE COMMERCIAL GOODS TRANSPORTATION INDUSTRY FAIR PLAY
17 ACT".

18 S 862-A. DEFINITIONS. AS USED IN THIS ARTICLE:

19 1. "COMMERCIAL GOODS TRANSPORTATION CONTRACTOR" MEANS ANY SOLE PROPRI-
20 ETOR, PARTNERSHIP, FIRM, CORPORATION, LIMITED LIABILITY COMPANY, ASSOCI-
21 ATION OR OTHER LEGAL ENTITY PERMITTED BY LAW TO DO BUSINESS WITHIN THE
22 STATE WHO COMPENSATES COMMERCIAL VEHICLE DRIVERS WHO POSSESSES A STATE-
23 ISSUED COMMERCIAL DRIVER'S LICENSE TO TRANSPORT GOODS IN THE STATE OF
24 NEW YORK.

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

LBD11981-03-2

1 2. "COMMERCIAL GOODS TRANSPORTATION CONTRACTOR" INCLUDES A GENERAL
2 COMMERCIAL GOODS TRANSPORTATION CONTRACTOR OR A COMMERCIAL GOODS TRANS-
3 PORTATION SUBCONTRACTOR.

4 3. "COMMERCIAL GOODS TRANSPORTATION SERVICES" MEANS THE TRANSPORTATION
5 OF GOODS FOR COMPENSATION BY A COMMERCIAL VEHICLE DRIVER WHO POSSESSES A
6 STATE-ISSUED COMMERCIAL DRIVER'S LICENSE AND TRANSPORTS GOODS IN THE
7 STATE OF NEW YORK.

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

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

10 6. "EMPLOYER" MEANS ANY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR
11 WHICH COMPENSATES COMMERCIAL VEHICLE DRIVERS WHO POSSESS A STATE-ISSUED
12 COMMERCIAL DRIVER'S LICENSE TO TRANSPORT GOODS IN THE STATE OF NEW YORK.

13 S 862-B. PRESUMPTION OF EMPLOYMENT IN THE COMMERCIAL GOODS TRANSPORTA-
14 TION INDUSTRY. 1. ANY PERSON PERFORMING COMMERCIAL GOODS TRANSPORTATION
15 SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR SHALL BE CLAS-
16 SIFIED AS AN EMPLOYEE UNLESS THE PERSON IS A SEPARATE BUSINESS ENTITY
17 UNDER SUBDIVISION TWO OF THIS SECTION OR ALL OF THE FOLLOWING CRITERIA
18 ARE MET, IN WHICH CASE THE PERSON SHALL BE AN INDEPENDENT CONTRACTOR:

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

21 (B) THE SERVICE MUST BE PERFORMED OUTSIDE THE USUAL COURSE OF BUSINESS
22 FOR WHICH THE SERVICE IS PERFORMED; AND

23 (C) THE INDIVIDUAL IS CUSTOMARILY ENGAGED IN AN INDEPENDENTLY ESTAB-
24 LISHED TRADE, OCCUPATION, PROFESSION, OR BUSINESS THAT IS SIMILAR TO THE
25 SERVICE AT ISSUE.

26 2. A BUSINESS ENTITY, INCLUDING ANY SOLE PROPRIETOR, PARTNERSHIP,
27 CORPORATION OR ENTITY THAT MAY BE A COMMERCIAL GOODS TRANSPORTATION
28 CONTRACTOR UNDER THIS SECTION SHALL BE CONSIDERED A SEPARATE BUSINESS
29 ENTITY FROM THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WHERE ALL THE
30 FOLLOWING CRITERIA ARE MET:

31 (A) THE BUSINESS ENTITY IS PERFORMING THE SERVICE FREE FROM THE DIREC-
32 TION OR CONTROL OVER THE MEANS AND MANNER OF PROVIDING THE SERVICE,
33 SUBJECT ONLY TO THE RIGHT OF THE COMMERCIAL GOODS TRANSPORTATION
34 CONTRACTOR FOR WHOM THE SERVICE IS PROVIDED TO SPECIFY THE DESIRED
35 RESULT;

36 (B) THE BUSINESS ENTITY IS NOT SUBJECT TO CANCELLATION OR DESTRUCTION
37 UPON SEVERANCE OF THE RELATIONSHIP WITH THE COMMERCIAL GOODS TRANSPORTA-
38 TION CONTRACTOR;

39 (C) THE BUSINESS ENTITY HAS A SUBSTANTIAL INVESTMENT OF CAPITAL IN THE
40 BUSINESS ENTITY BEYOND ORDINARY TOOLS AND EQUIPMENT AND A PERSONAL VEHI-
41 CLE;

42 (D) THE BUSINESS ENTITY OWNS THE CAPITAL GOODS AND GAINS THE PROFITS
43 AND BEARS THE LOSSES OF THE BUSINESS ENTITY;

44 (E) THE BUSINESS ENTITY MAKES ITS SERVICES AVAILABLE TO THE GENERAL
45 PUBLIC OR THE BUSINESS COMMUNITY ON A CONTINUING BASIS;

46 (F) THE BUSINESS ENTITY INCLUDES SERVICES RENDERED ON A FEDERAL INCOME
47 TAX SCHEDULE AS AN INDEPENDENT BUSINESS OR PROFESSION;

48 (G) THE BUSINESS ENTITY PERFORMS SERVICES FOR THE COMMERCIAL GOODS
49 TRANSPORTATION CONTRACTOR UNDER THE BUSINESS ENTITY'S NAME;

50 (H) WHEN THE SERVICES BEING PROVIDED REQUIRE A LICENSE OR PERMIT, THE
51 BUSINESS ENTITY OBTAINS AND PAYS FOR THE LICENSE OR PERMIT IN THE BUSI-
52 NESS ENTITY'S NAME;

53 (I) THE BUSINESS ENTITY FURNISHES THE TOOLS AND EQUIPMENT NECESSARY TO
54 PROVIDE THE SERVICE;

55 (J) IF NECESSARY, THE BUSINESS ENTITY HIRES ITS OWN EMPLOYEES WITHOUT
56 THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR'S APPROVAL, PAYS THE

1 EMPLOYEES WITHOUT REIMBURSEMENT FROM THE COMMERCIAL GOODS TRANSPORTATION
2 CONTRACTOR AND REPORTS THE EMPLOYEES' INCOME TO THE INTERNAL REVENUE
3 SERVICE;

4 (K) THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR DOES NOT REPRESENT
5 THE BUSINESS ENTITY AS AN EMPLOYEE OF THE COMMERCIAL GOODS TRANSPORTA-
6 TION CONTRACTOR TO ITS CUSTOMERS; AND

7 (L) THE BUSINESS ENTITY HAS THE RIGHT TO PERFORM SIMILAR SERVICES FOR
8 OTHERS ON WHATEVER BASIS AND WHENEVER IT CHOOSES.

9 3. THE FAILURE TO WITHHOLD FEDERAL OR STATE INCOME TAXES OR TO PAY
10 UNEMPLOYMENT COMPENSATION CONTRIBUTIONS OR WORKERS' COMPENSATION PREMI-
11 UMS WITH RESPECT TO AN INDIVIDUAL'S WAGES SHALL NOT BE CONSIDERED IN
12 MAKING A DETERMINATION UNDER THIS SECTION, EXCEPT AS SET FORTH IN PARA-
13 GRAPH (F) OF SUBDIVISION TWO OF THIS SECTION.

14 4. AN INDIVIDUAL'S ACT OF SECURING WORKERS' COMPENSATION INSURANCE
15 WITH A CARRIER AS A SOLE PROPRIETOR, PARTNERSHIP OR OTHERWISE SHALL NOT
16 BE BINDING ON ANY DETERMINATION UNDER THIS SECTION.

17 5. WHEN A BUSINESS ENTITY MEETS THE DEFINITION OF A SEPARATE BUSINESS
18 ENTITY PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE SEPARATE BUSI-
19 NESS ENTITY WILL BE CONSIDERED A COMMERCIAL GOODS TRANSPORTATION
20 CONTRACTOR SUBJECT TO ALL THE PROVISIONS OF THIS ARTICLE IN REGARD TO
21 THE CLASSIFICATION OF INDIVIDUALS PERFORMING SERVICES FOR IT.

22 S 862-C. NOTICE TO PERSONS RECEIVING REMUNERATION FROM COMMERCIAL
23 GOODS TRANSPORTATION CONTRACTORS AND COMMERCIAL GOODS TRANSPORTATION
24 SUBCONTRACTORS. 1. EVERY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR
25 SHALL POST IN A PROMINENT AND ACCESSIBLE PLACE ON THE SITE WHERE COMMER-
26 CIAL GOODS TRANSPORTATION ACTIVITY IS CONDUCTED A LEGIBLE STATEMENT,
27 PROVIDED BY THE COMMISSIONER, THAT DESCRIBES THE RESPONSIBILITY OF INDE-
28 PENDENT CONTRACTORS TO PAY TAXES REQUIRED BY STATE AND FEDERAL LAW, THE
29 RIGHTS OF EMPLOYEES TO WORKERS' COMPENSATION, UNEMPLOYMENT BENEFITS,
30 MINIMUM WAGE, OVERTIME AND OTHER FEDERAL AND STATE WORKPLACE
31 PROTECTIONS, AND THE PROTECTIONS AGAINST RETALIATION AND THE PENALTIES
32 IN THIS ARTICLE IF THE CONTRACTOR FAILS TO PROPERLY CLASSIFY AN INDIVID-
33 UAL AS AN EMPLOYEE. THIS NOTICE SHALL ALSO CONTAIN CONTACT INFORMATION
34 FOR INDIVIDUALS TO FILE COMPLAINTS OR INQUIRE WITH THE COMMISSIONER
35 ABOUT EMPLOYMENT CLASSIFICATION STATUS. THIS INFORMATION SHALL BE
36 PROVIDED IN ENGLISH, SPANISH OR OTHER LANGUAGES REQUIRED BY THE COMMIS-
37 SIONER. THE POSTED STATEMENT SHALL BE CONSTRUCTED OF MATERIALS CAPABLE
38 OF WITHSTANDING ADVERSE WEATHER CONDITIONS.

39 2. WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE, THE
40 COMMISSIONER SHALL CREATE THE NOTICE DESCRIBED IN SUBDIVISION ONE OF
41 THIS SECTION AND POST THE NOTICE ON THE DEPARTMENT'S WEBSITE FOR DOWN-
42 LOADING BY COMMERCIAL GOODS TRANSPORTATION CONTRACTORS.

43 3. COMMERCIAL GOODS TRANSPORTATION CONTRACTORS WHO VIOLATE THIS
44 SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO ONE THOUSAND FIVE
45 HUNDRED DOLLARS FOR A FIRST VIOLATION, AND UP TO FIVE THOUSAND DOLLARS
46 FOR A SUBSEQUENT VIOLATION WITHIN A FIVE YEAR PERIOD.

47 S 862-D. VIOLATIONS AND PENALTIES. 1. ANY COMMERCIAL GOODS TRANSPORTA-
48 TION CONTRACTOR WHO WILLFULLY FAILS TO PROPERLY CLASSIFY AN INDIVIDUAL
49 AS AN EMPLOYEE AS PROVIDED UNDER SECTION EIGHT HUNDRED SIXTY-TWO-B OF
50 THIS ARTICLE SHALL BE SUBJECT TO THE CIVIL AND CRIMINAL PENALTIES
51 PROVIDED UNDER THIS SECTION. THE CIVIL PENALTIES SET FORTH IN THIS
52 SECTION SHALL BE IMPOSED AS FOLLOWS: BY THE COMMISSIONER WHERE SUCH
53 PENALTY IS BASED ON A VIOLATION OF THIS CHAPTER; BY THE CHAIR OF THE
54 WORKERS' COMPENSATION BOARD WHERE SUCH PENALTY IS BASED ON A VIOLATION
55 OF THE WORKERS' COMPENSATION LAW; AND BY THE COMMISSIONER OF TAXATION
56 AND FINANCE WHEN SUCH PENALTY IS BASED ON A VIOLATION OF THE TAX LAW,

1 PROVIDED THAT NO MORE THAN ONE CIVIL PENALTY UNDER THIS SECTION MAY BE
2 IMPOSED PER EMPLOYEE PER INCIDENT OF MISCLASSIFICATION.

3 (A) THE WORKERS' COMPENSATION BOARD SHALL PROVIDE A COPY OF ANY ORDER
4 RELATING TO THE MISCLASSIFICATION OF AN EMPLOYEE, THE INTENTIONAL AND
5 MATERIAL UNDERPAYMENT OR CONCEALMENT OF PAYROLL, OR THE FAILURE TO
6 SECURE WORKERS' COMPENSATION IN THE COMMERCIAL GOODS TRANSPORTATION
7 INDUSTRY TO THE COMMISSIONER AND COMMISSIONER OF TAXATION AND FINANCE NO
8 LATER THAN SEVEN DAYS AFTER THE ISSUANCE OF THE ORDER.

9 (B) NOTWITHSTANDING THE SECRECY PROVISIONS CONTAINED IN ARTICLES
10 NINE-A AND TWENTY-TWO OF THE TAX LAW, THE DEPARTMENT OF TAXATION AND
11 FINANCE SHALL PROVIDE A COPY OF ANY ASSESSMENT FOR FAILURE TO PAY BUSI-
12 NESS, CORPORATE OR PERSONAL INCOME TAX BY AN EMPLOYER IN THE COMMERCIAL
13 GOODS TRANSPORTATION INDUSTRY ARISING OUT OF THE MISCLASSIFICATION OF AN
14 EMPLOYEE TO THE COMMISSIONER AND CHAIR OF THE WORKERS' COMPENSATION
15 BOARD NO LATER THAN SEVEN DAYS AFTER THE ISSUANCE OF THE ASSESSMENT.

16 (C) UPON THE ISSUANCE OF AN ORDER OR DETERMINATION BY THE COMMISSIONER
17 FOR A VIOLATION AND PENALTIES UNDER THIS ARTICLE, THE COMMISSIONER SHALL
18 PROVIDE A COPY OF THE ORDER TO THE CHAIR OF THE WORKERS' COMPENSATION
19 BOARD AND THE COMMISSIONER OF TAXATION AND FINANCE NO LATER THAN SEVEN
20 DAYS AFTER THE ISSUANCE OF THE ORDER.

21 2. FOR THE PURPOSES OF THIS SECTION, THE TERM "WILLFULLY VIOLATES"
22 MEANS A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR KNEW OR SHOULD HAVE
23 KNOWN THAT HIS OR HER CONDUCT WAS PROHIBITED BY THIS SECTION.

24 3. ANY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WHO WILLFULLY
25 VIOLATES SECTION EIGHT HUNDRED SIXTY-TWO-B OF THIS ARTICLE SHALL BE
26 SUBJECT TO A CIVIL PENALTY OF UP TO TWENTY-FIVE HUNDRED DOLLARS FOR THE
27 FIRST VIOLATION PER MISCLASSIFIED EMPLOYEE AND TO A CIVIL PENALTY OF UP
28 TO FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION PER MISCLASSIFIED
29 EMPLOYEE WITHIN A FIVE YEAR PERIOD.

30 4. IN ADDITION TO CIVIL PENALTIES, THE CRIMINAL PENALTIES IMPOSED ON A
31 COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WHO WILLFULLY VIOLATES THE
32 PROVISIONS OF THIS ARTICLE SHALL BE A MISDEMEANOR AND UPON CONVICTION
33 SHALL BE PUNISHED FOR A FIRST OFFENSE BY IMPRISONMENT FOR NOT MORE THAN
34 THIRTY DAYS OR A FINE NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS AND FOR
35 A SUBSEQUENT OFFENSE BY IMPRISONMENT FOR NOT MORE THAN SIXTY DAYS OR A
36 FINE NOT TO EXCEED FIFTY THOUSAND DOLLARS.

37 5. IF THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR IS A CORPORATION,
38 ANY OFFICER OF SUCH CORPORATION OR SHAREHOLDER WHO OWNS OR CONTROLS AT
39 LEAST TEN PERCENT OF THE OUTSTANDING STOCK OF SUCH CORPORATION WHO KNOW-
40 INGLY PERMITS THE CORPORATION TO WILLFULLY VIOLATE THE PROVISIONS OF
41 THIS ARTICLE SHALL ALSO BE IN VIOLATION OF THIS ARTICLE AND THE CIVIL
42 AND CRIMINAL PENALTIES HEREIN SHALL ATTACH TO SUCH OFFICER UPON
43 CONVICTION.

44 6. ANY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR SUBJECT TO CIVIL
45 PENALTIES UNDER THIS ARTICLE SHALL ALSO BE SUBJECT TO ANY OTHER APPLICA-
46 BLE PENALTIES OR REMEDIES PROVIDED BY LAW FOR FAILURE TO PAY ANY OTHER
47 STATUTORY PAYMENT OR COVERAGE OBLIGATIONS, INCLUDING BUT NOT LIMITED TO,
48 UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION INSURANCE, OR BUSINESS,
49 CORPORATE OR PERSONAL INCOME TAX, AS FOLLOWS:

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

52 (B) FOR INTENTIONAL AND MATERIAL UNDERSTATEMENT OR CONCEALMENT OF
53 PAYROLL OR FAILURE TO SECURE WORKERS' COMPENSATION INSURANCE, THE PENAL-
54 TIES IMPOSED BY PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION FIFTY-TWO OF
55 THE WORKERS' COMPENSATION LAW, AND FOR FAILURE TO KEEP A TRUE AND ACCU-
56 RATE RECORD PURSUANT TO SECTION ONE HUNDRED THIRTY-ONE OF THE WORKERS'

1 COMPENSATION LAW, THE PENALTIES OF SECTION ONE HUNDRED THIRTY-ONE OF THE
2 WORKERS' COMPENSATION LAW.

3 (C) FOR FAILURE TO PAY BUSINESS, CORPORATE OR PERSONAL INCOME TAX, THE
4 PENALTIES IMPOSED BY SECTION SIX HUNDRED EIGHTY-FIVE AND ONE THOUSAND
5 EIGHTY-FIVE OF THE TAX LAW.

6 7. ANY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR OR ANY OFFICER OR
7 SHAREHOLDER WHO OWNS OR CONTROLS AT LEAST TEN PERCENT OF THE OUTSTANDING
8 STOCK OF SUCH CORPORATION THAT HAS BEEN CONVICTED OF A MISDEMEANOR SHALL
9 BE SUBJECT TO DEBARMENT AND BE INELIGIBLE TO SUBMIT A BID ON OR BE
10 AWARDED ANY PUBLIC WORKS CONTRACT WITH THE STATE, ANY MUNICIPAL CORPO-
11 RATION, PUBLIC BENEFIT CORPORATION, PUBLIC AUTHORITY OR PUBLIC BODY FOR
12 A PERIOD OF UP TO ONE YEAR FROM THE DATE OF SUCH CONVICTION OR FINAL
13 DETERMINATION, OR UP TO FIVE YEARS IN THE EVENT OF ANY SUBSEQUENT
14 VIOLATION.

15 8. ANY SUBSTANTIALLY OWNED AFFILIATED ENTITY OF A COMMERCIAL GOODS
16 TRANSPORTATION CONTRACTOR, AS DEFINED BY PARAGRAPH G OF SUBDIVISION FIVE
17 OF SECTION TWO HUNDRED TWENTY OF THIS CHAPTER, SHALL BE SUBJECT TO THE
18 SAME CIVIL PENALTY PROVIDED UNDER THIS ARTICLE FOR A VIOLATION OF SUCH
19 PROVISION.

20 9. ANY PENALTIES IMPOSED UNDER THIS SECTION BY THE COMMISSIONER SHALL
21 BE APPEALED TO THE INDUSTRIAL BOARD OF APPEALS IN ACCORDANCE WITH ARTI-
22 CLE THREE OF THIS CHAPTER. ANY PENALTIES IMPOSED UNDER THIS SECTION BY
23 THE WORKERS' COMPENSATION BOARD OR COMMISSIONER OF TAXATION AND FINANCE
24 SHALL BE APPEALED IN THE SAME MANNER AS THE UNDERLYING VIOLATION.

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

27 11. ANY FEE OR PENALTY ASSESSED FOR A VIOLATION OF THIS ARTICLE SHALL
28 BE DEPOSITED INTO THE DEPARTMENT'S FEE AND PENALTY ACCOUNT.

29 S 862-E. RETALIATION. 1. IT IS A VIOLATION OF THIS ARTICLE FOR AN
30 EMPLOYER OR ANY AGENT OF ANY EMPLOYER, TO RETALIATE THROUGH DISCHARGE OR
31 IN ANY OTHER MANNER AGAINST ANY PERSON IN THE TERMS OF CONDITIONS OF HIS
32 OR HER EMPLOYMENT FOR EXERCISING ANY RIGHTS GRANTED UNDER THIS ARTICLE
33 FOR:

34 (A) MAKING, OR THREATENING TO MAKE, A COMPLAINT TO AN EMPLOYER,
35 CO-WORKER OR TO A PUBLIC BODY THAT RIGHTS GUARANTEED UNDER THIS ARTICLE
36 HAVE BEEN VIOLATED;

37 (B) CAUSING TO BE INSTITUTED ANY PROCEEDING UNDER OR RELATED TO THIS
38 ARTICLE; OR

39 (C) PROVIDING INFORMATION TO, OR TESTIFYING BEFORE, ANY PUBLIC BODY
40 CONDUCTING AN INVESTIGATION, HEARING OR INQUIRY INTO ANY SUCH VIOLATION
41 OF A LAW, RULE OR REGULATION BY SUCH EMPLOYER. NOTHING IN THIS SECTION
42 SHALL LIMIT THE COMMISSIONER'S AUTHORITY UNDER SECTION TWO HUNDRED
43 FIFTEEN OF THIS CHAPTER, OR ANY OTHER STATUTE.

44 2. ANY ACT OF RETALIATION UNDER THIS SECTION SHALL SUBJECT AN EMPLOYER
45 TO THE CIVIL PENALTIES UNDER SECTION EIGHT HUNDRED SIXTY-TWO-D OF THIS
46 ARTICLE, OR TO A PRIVATE CAUSE OF ACTION, OR BOTH.

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

49 (1-C) AS AN EMPLOYEE IN THE COMMERCIAL GOODS TRANSPORTATION INDUSTRY
50 UNLESS THE PRESUMPTION OF EMPLOYMENT CAN BE OVERCOME, AS PROVIDED UNDER
51 SECTION EIGHT HUNDRED SIXTY-TWO-B OF THIS CHAPTER; OR

52 S 3. The opening paragraph of subdivision 4 of section 2 of the work-
53 ers' compensation law, as amended by chapter 418 of the laws of 2010, is
54 amended to read as follows:

55 "Employee" means a person engaged in one of the occupations enumerated
56 in section three of this article or who is in the service of an employer

1 whose principal business is that of carrying on or conducting a hazard-
2 ous employment upon the premises or at the plant, or in the course of
3 his or her employment away from the plant of his or her employer;
4 "employee" shall also mean for the purposes of this chapter any individ-
5 ual performing services in construction for a contractor who does not
6 overcome the presumption of employment as provided under section eight
7 hundred sixty-one-c of the labor law; "EMPLOYEE" SHALL ALSO MEAN FOR THE
8 PURPOSES OF THIS CHAPTER ANY INDIVIDUAL PERFORMING SERVICES IN THE
9 COMMERCIAL GOODS TRANSPORTATION INDUSTRY FOR A COMMERCIAL GOODS TRANS-
10 PORTATION CONTRACTOR WHO DOES NOT OVERCOME THE PRESUMPTION OF EMPLOYMENT
11 AS PROVIDED UNDER SECTION EIGHT HUNDRED SIXTY-TWO-B 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) of this subdivision was not executed under duress and
14 contains the following provisions:

15 S 4. Notwithstanding any other provision of law to the contrary, the
16 provisions of section 862-b of the labor law, as added by section one of
17 this act, shall apply to and be utilized for all determinations of a
18 commercial goods transportation industry individual's employment status
19 under the labor law and the workers' compensation law, but not the tax
20 law.

21 S 5. This act shall take effect immediately.