

5237

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 21, 2013

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Introduced by M. of A. WRIGHT -- read once and referred 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 ASSEM-  
BLY, 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-

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

LBD00724-01-3

1 ISSUED COMMERCIAL DRIVER'S LICENSE TO TRANSPORT GOODS IN THE STATE OF  
2 NEW YORK.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (I) THE BUSINESS ENTITY FURNISHES THE TOOLS AND EQUIPMENT NECESSARY TO  
56 PROVIDE THE SERVICE;

(J) IF NECESSARY, THE BUSINESS ENTITY HIRES ITS OWN EMPLOYEES WITHOUT THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR'S APPROVAL, PAYS THE EMPLOYEES WITHOUT REIMBURSEMENT FROM THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR AND REPORTS THE EMPLOYEES' INCOME TO THE INTERNAL REVENUE SERVICE;

(K) THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR DOES NOT REPRESENT THE BUSINESS ENTITY AS AN EMPLOYEE OF THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR TO ITS CUSTOMERS; AND

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

3. THE FAILURE TO WITHHOLD FEDERAL OR STATE INCOME TAXES OR TO PAY UNEMPLOYMENT COMPENSATION CONTRIBUTIONS OR WORKERS' COMPENSATION PREMIUMS WITH RESPECT TO AN INDIVIDUAL'S WAGES SHALL NOT BE CONSIDERED IN MAKING A DETERMINATION UNDER THIS SECTION, EXCEPT AS SET FORTH IN PARAGRAPH (F) OF SUBDIVISION TWO OF THIS SECTION.

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

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

S 862-C. NOTICE TO PERSONS RECEIVING REMUNERATION FROM COMMERCIAL GOODS TRANSPORTATION CONTRACTORS AND COMMERCIAL GOODS TRANSPORTATION SUBCONTRACTORS. 1. EVERY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR SHALL POST IN A PROMINENT AND ACCESSIBLE PLACE ON THE SITE WHERE COMMERCIAL GOODS TRANSPORTATION ACTIVITY IS CONDUCTED A LEGIBLE STATEMENT, PROVIDED BY THE COMMISSIONER, THAT DESCRIBES THE RESPONSIBILITY OF INDEPENDENT CONTRACTORS TO PAY TAXES REQUIRED BY STATE AND FEDERAL LAW, THE RIGHTS OF EMPLOYEES TO WORKERS' COMPENSATION, UNEMPLOYMENT BENEFITS, MINIMUM WAGE, OVERTIME AND OTHER FEDERAL AND STATE WORKPLACE PROTECTIONS, AND THE PROTECTIONS AGAINST RETALIATION AND THE PENALTIES IN THIS ARTICLE IF THE CONTRACTOR FAILS TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN EMPLOYEE. THIS NOTICE SHALL ALSO CONTAIN CONTACT INFORMATION FOR INDIVIDUALS TO FILE COMPLAINTS OR INQUIRE WITH THE COMMISSIONER ABOUT EMPLOYMENT CLASSIFICATION STATUS. THIS INFORMATION SHALL BE PROVIDED IN ENGLISH, SPANISH OR OTHER LANGUAGES REQUIRED BY THE COMMISSIONER. THE POSTED STATEMENT SHALL BE CONSTRUCTED OF MATERIALS CAPABLE OF WITHSTANDING ADVERSE WEATHER CONDITIONS.

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

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

S 862-D. VIOLATIONS AND PENALTIES. 1. ANY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WHO WILLFULLY FAILS TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN EMPLOYEE AS PROVIDED UNDER SECTION EIGHT HUNDRED SIXTY-TWO-B OF THIS ARTICLE SHALL BE SUBJECT TO THE CIVIL AND CRIMINAL PENALTIES PROVIDED UNDER THIS SECTION. THE CIVIL PENALTIES SET FORTH IN THIS SECTION SHALL BE IMPOSED AS FOLLOWS: BY THE COMMISSIONER WHERE SUCH PENALTY IS BASED ON A VIOLATION OF THIS CHAPTER; BY THE CHAIR OF THE WORKERS' COMPENSATION BOARD WHERE SUCH PENALTY IS BASED ON A VIOLATION

1 OF THE WORKERS' COMPENSATION LAW; AND BY THE COMMISSIONER OF TAXATION  
2 AND FINANCE WHEN SUCH PENALTY IS BASED ON A VIOLATION OF THE TAX LAW,  
3 PROVIDED THAT NO MORE THAN ONE CIVIL PENALTY UNDER THIS SECTION MAY BE  
4 IMPOSED PER EMPLOYEE PER INCIDENT OF MISCLASSIFICATION.

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

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

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

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

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

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

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

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

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

54 (B) FOR INTENTIONAL AND MATERIAL UNDERSTATEMENT OR CONCEALMENT OF  
55 PAYROLL OR FAILURE TO SECURE WORKERS' COMPENSATION INSURANCE, THE PENAL-  
56 TIES IMPOSED BY PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION FIFTY-TWO OF

THE WORKERS' COMPENSATION LAW, AND FOR FAILURE TO KEEP A TRUE AND ACCURATE RECORD PURSUANT TO SECTION ONE HUNDRED THIRTY-ONE OF THE WORKERS' COMPENSATION LAW, THE PENALTIES OF SECTION ONE HUNDRED THIRTY-ONE OF THE WORKERS' COMPENSATION LAW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 S 5. This act shall take effect immediately.