

5867

2013-2014 Regular Sessions

I N S E N A T E

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Introduced by Sens. SAVINO, ADDABBO, AVELLA, BOYLE, DILAN, GOLDEN, HASSELL-THOMPSON, KRUEGER, LATIMER, MARTINS, PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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

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

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1 STATE WHO COMPENSATES COMMERCIAL VEHICLE DRIVERS WHO POSSESSES A STATE-
2 ISSUED COMMERCIAL DRIVER'S LICENSE TO TRANSPORT GOODS IN THE STATE OF
3 NEW YORK.

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

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

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

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

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

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

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

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

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

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

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

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

42 (C) THE BUSINESS ENTITY HAS A SUBSTANTIAL INVESTMENT OF CAPITAL IN THE
43 BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO ORDINARY TOOLS AND EQUIP-
44 MENT;

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

47 (E) THE BUSINESS ENTITY HAS AN OPTION TO MAKE ITS SERVICES AVAILABLE
48 TO THE GENERAL PUBLIC OR THE BUSINESS COMMUNITY ON A CONTINUING BASIS;

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

51 (G) THE BUSINESS ENTITY PERFORMS SERVICES FOR THE COMMERCIAL GOODS
52 TRANSPORTATION CONTRACTOR PURSUANT TO A WRITTEN CONTRACT, UNDER THE
53 BUSINESS ENTITY'S NAME, SPECIFYING THEIR RELATIONSHIP TO BE AS INDEPEND-
54 ENT CONTRACTORS OR SEPARATE BUSINESS ENTITIES;

55 (H) WHEN THE SERVICES BEING PROVIDED REQUIRE A LICENSE OR PERMIT, THE
56 BUSINESS ENTITY PAYS FOR THE LICENSE OR PERMIT IN THE BUSINESS ENTITY'S

1 NAME OR, WHERE PERMITTED BY LAW, PAYS FOR REASONABLE USE OF THE COMMER-
2 CIAL GOODS TRANSPORTATION CONTRACTOR'S LICENSE OR PERMIT;

3 (I) IF NECESSARY, THE BUSINESS ENTITY HIRES ITS OWN EMPLOYEES, SUBJECT
4 TO APPLICABLE QUALIFICATION REQUIREMENTS OR FEDERAL OR STATE LAWS, RULES
5 OR REGULATIONS, PAYS THE EMPLOYEES WITHOUT REIMBURSEMENT FROM THE
6 COMMERCIAL GOOD TRANSPORTATION CONTRACTOR AND REPORTS THE EMPLOYEES'
7 INCOME TO THE INTERNAL REVENUE SERVICE;

8 (J) THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR DOES NOT REQUIRE
9 THAT THE BUSINESS ENTITY BE REPRESENTED AS AN EMPLOYEE OF THE COMMERCIAL
10 GOODS TRANSPORTATION CONTRACTOR TO ITS CUSTOMERS; AND

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

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

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

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

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

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

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

51 S 862-D. VIOLATIONS AND PENALTIES. 1. ANY COMMERCIAL GOODS TRANSPORTA-
52 TION CONTRACTOR WHO WILLFULLY FAILS TO PROPERLY CLASSIFY AN INDIVIDUAL
53 AS AN EMPLOYEE AS PROVIDED UNDER SECTION EIGHT HUNDRED SIXTY-TWO-B OF
54 THIS ARTICLE SHALL BE SUBJECT TO THE CIVIL AND CRIMINAL PENALTIES
55 PROVIDED UNDER THIS SECTION. THE CIVIL PENALTIES SET FORTH IN THIS
56 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 OF THE WORKERS' COMPENSATION LAW; AND BY THE COMMISSIONER OF TAXATION AND FINANCE WHEN SUCH PENALTY IS BASED ON A VIOLATION OF THE TAX LAW, PROVIDED THAT NO MORE THAN ONE CIVIL PENALTY UNDER THIS SECTION MAY BE IMPOSED PER EMPLOYEE PER INCIDENT OF MISCLASSIFICATION.

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

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

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

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

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

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

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

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

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

(B) FOR INTENTIONAL AND MATERIAL UNDERSTATEMENT OR CONCEALMENT OF PAYROLL OR FAILURE TO SECURE WORKERS' COMPENSATION INSURANCE, THE PENALTIES 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

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

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

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

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

26 S 5. This act shall take effect on the sixtieth day after it shall
27 have become a law.