

# STATE OF NEW YORK

2766--A

2021-2022 Regular Sessions

## IN SENATE

January 25, 2021

Introduced by Sens. RAMOS, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRISPORT, BROOKS, COMRIE, GAUGHRAN, HINCHEY, HOYLMAN, JACKSON, MANNION, MATTERA, MAY, MAYER, MYRIE, PARKER, REICHLIN-MELNICK, RIVERA, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the general business law, in relation to actions for non-payment of wages

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 section 198-e to  
2 read as follows:

3 § 198-e. Construction industry wage theft. 1. A contractor making or  
4 taking a construction contract shall assume liability for any debt  
5 resulting from an action under section one hundred ninety-eight of this  
6 article, owed to a wage claimant or third party on the wage claimant's  
7 behalf, incurred by a subcontractor at any tier acting under, by, or for  
8 the contractor or its subcontractors for the wage claimant's performance  
9 of labor.

10 2. No agreement or release by an employee or subcontractor to waive  
11 liability assigned to a contractor under this section shall be valid  
12 except as otherwise provided herein. The provisions of this section  
13 shall not be deemed to impair the rights of a contractor to maintain an  
14 action against a subcontractor or lower tiered subcontractor for amounts  
15 for owed wages that are paid by a contractor pursuant to this section.

16 3. Notwithstanding any other provision of law, the remedies available  
17 for a claim pursuant to subdivision one of this section shall only be  
18 civil and administrative actions.

19 4. In the case of a private civil action by an employee, such employee  
20 may designate any person, organization or collective bargaining agent

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

LBD04456-03-1

1 authorized to file a complaint with the commissioner pursuant to  
2 section one hundred ninety-six-a of this article, to make a wage claim  
3 on his or her behalf.

4 5. In the case of an action against a subcontractor, the contractor  
5 shall be considered jointly and severally liable for any unpaid wages,  
6 benefits, wage supplements, and any other remedies available pursuant to  
7 the requirements of section one hundred ninety-eight of this article.

8 6. Nothing herein shall preclude the attorney general from bringing a  
9 civil action to collect unpaid wages and penalties on behalf of employ-  
10 ees pursuant to this section.

11 7. A contractor or any other person shall not evade, or commit any act  
12 that negates, the requirements of this section, provided, however, that  
13 this section shall not be deemed to prohibit a contractor or subcontrac-  
14 tor at any tier from establishing by contract or enforcing any other  
15 lawful remedies against a subcontractor it hires for liability created  
16 by violation of this section, provided that such contract or arrangement  
17 does not diminish the right of employees to bring an action under the  
18 provisions of this section.

19 8. As used in this section:

20 a. "Construction contract" means a written or oral agreement for the  
21 construction, reconstruction, alteration, maintenance, moving or demoli-  
22 tion of any building, structure or improvement, or relating to the exca-  
23 vation of or other development or improvement to land. For purposes of  
24 this section, a construction contract shall not include: any contract  
25 which is subject to article eight of this chapter; a home improvement  
26 contract for the performance of a home improvement between a home  
27 improvement contractor and the owner of an owner-occupied dwelling; and  
28 a home construction contract for one- or two-family dwelling units  
29 except where such contract or contracts results in the construction of  
30 more than ten one- or two-family owner-occupied dwellings at one project  
31 site annually.

32 b. "Contractor" means any person, firm, partnership, corporation,  
33 association, company, organization or other entity, including a  
34 construction manager, general or prime contractor, joint venture, or any  
35 combination thereof, which enters into a construction contract with an  
36 owner.

37 c. "Owner" means any person, firm, partnership, corporation, company,  
38 association or other organization or other entity, or a combination of  
39 any thereof, (with an ownership interest, whether the interest or estate  
40 is in fee, as vendee under a contract to purchase, as lessee or another  
41 interest or estate less than fee) that causes a building, structure or  
42 improvement, new or existing, to be constructed, altered, repaired,  
43 maintained, moved or demolished or that causes land to be excavated or  
44 otherwise developed or improved.

45 d. "Subcontractor" means any person, firm, partnership, corporation,  
46 company, association, organization or other entity, or any combination  
47 thereof, which is a party to a contract with a contractor, and/or the  
48 contractor's subcontractors to perform any portion of work within the  
49 scope of the contractor's construction contract with the owner, includ-  
50 ing where the subcontractor has no direct privity of contract with the  
51 contractor.

52 9. The provisions of this section shall be applicable for any claims  
53 occurring no later than three years prior to the initiation of such  
54 claim in a court of competent jurisdiction or the commencement of a  
55 civil action brought forth by the attorney general or department. The  
56 provisions of this section shall not be deemed to diminish, impair, or

1 otherwise infringe on any other rights of an employee provided pursuant  
2 to this chapter.

3 10. Nothing in this section shall be deemed to diminish the rights,  
4 privileges, or remedies of any employee under any collective bargaining  
5 agreement. The provisions of this section may be waived by a collective  
6 bargaining agreement with a bona fide building and construction trade  
7 labor organization which has established itself, and/or its affiliates,  
8 as the collective bargaining representative for persons performing work  
9 on a project, provided that for such waiver to be valid, it shall  
10 explicitly reference this section.

11 § 2. Section 756-a of the general business law is amended by adding a  
12 new subdivision 5 to read as follows:

13 5. Wage theft prevention and enforcement. (a) Upon request of a  
14 contractor or subcontractor to any lower tier subcontractor, the subcon-  
15 tractor or lower tier subcontractor shall provide certified payroll  
16 records which, at a minimum, contain all lawfully required information  
17 required for all employees providing labor on the project. Such payroll  
18 records shall contain sufficient information to apprise the contractor  
19 or subcontractor of the lower tier subcontractor's payment status in  
20 paying wages and making any applicable fringe or other benefit payments  
21 or contributions to a third party on its employee's behalf. Payroll  
22 records shall be marked or obliterated only to prevent disclosure of an  
23 individual's full social security number but shall provide the last four  
24 digits of the social security number.

25 (b) Upon request of a contractor or subcontractor to any lower tier  
26 subcontractor, the subcontractor or lower tier subcontractor shall  
27 provide the names of all its workers on the project, including the names  
28 of all those designated as independent contractors, the name of the  
29 subcontractor with whom the lower tier subcontractor is under contract,  
30 the anticipated contract start date, scheduled duration of work, when  
31 applicable, local unions with whom the subcontractor or lower tier  
32 subcontractor is a signatory contractor, and the name, address and phone  
33 number of a contact for the lower tier subcontractor.

34 (c) Failure to timely comply with a request for information as  
35 provided herein shall be a basis for a contractor to withhold payments  
36 owed to a subcontractor or lower tier subcontractor.

37 (d) For purposes of this subdivision, "lower tier subcontractor" shall  
38 mean any person, firm, partnership, corporation, company, association,  
39 organization or other entity, or any combination thereof, which is a  
40 party to a contract with a subcontractor or other lower tier subcontract-  
41 tor to perform any portion of work within the scope of the contractor's  
42 contract with the owner.

43 § 3. Severability. If any provision of this act, or any application of  
44 any provision of this act, is held to be invalid, that shall not affect  
45 the validity or effectiveness of any other provision of this act, or of  
46 any other application of any provision of this act, which can be given  
47 effect without that provision or application; and to that end, the  
48 provisions and applications of this act are severable.

49 § 4. This act shall take effect on the one hundred twentieth day after  
50 it shall have become a law and shall apply to construction contracts  
51 entered into, renewed, modified or amended on or after such effective  
52 date.