S T A T E O F N E W Y O R K

4371

2009-2010 Regular Sessions

I N A S S E M B L Y

February 3, 2009

Introduced by M. of A. HEASTIE, PERALTA -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to establishing the day and temporary labor services act

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

Section 1. This act shall be known and may be cited as the "day and temporary labor services act".

S 2. Legislative findings. The legislature finds that recent studies and a survey of low-wage day or temporary laborers show that as a group, they are particularly vulnerable to abuse of their labor rights, including unpaid wages, failure to pay for all hours worked, minimum wage and overtime violations, and unlawful deduction from pay for meals, transportation, equipment, and other items. Current law is inadequate to protect the labor and employment rights of these workers.

S 3. The labor law is amended by adding a new article 6-A to read as follows:

ARTICLE 6-A

DAY AND TEMPORARY LABOR SERVICES ACT

SECTION 199-B. DEFINITIONS.
199-C. EMPLOYMENT OF STRIKEBREAKERS PROHIBITED.
199-D. EXEMPTIONS.
199-E. EMPLOYMENT NOTICE.
199-F. RECORDKEEPING.
199-G. MEALS, TRANSPORTATION, AND EQUIPMENT.
199-H. WAGE PAYMENT AND NOTICE.
199-I. PUBLIC ACCESS AREA.
199-J. WORK RESTRICTION.
199-K. REGISTRATION.
199-L. VIOLATIONS, ENFORCEMENT, AND PENALTIES.
199-M. CHECK CASHING; NOTICE OF FEES.

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

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199-N. RETALIATION.
199-O. PRIVATE RIGHT OF ACTION.

S 199-B. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "DAY OR TEMPORARY LABORER" MEANS A PERSON WHO CONTRACTS FOR EMPLOYMENT WITH A DAY AND TEMPORARY LABOR SERVICE PROVIDER.

2. "DAY AND TEMPORARY LABOR SERVICE PROVIDER" MEANS ANY PERSON OR ENTITY, INCLUDING A LABOR BROKER OR LABOR POOL, ENGAGED IN THE BUSINESS OF EMPLOYING DAY OR TEMPORARY LABORERS TO PROVIDE SERVICES, FOR A FEE, TO OR FOR ANY THIRD PARTY CLIENT PURSUANT TO A CONTRACT WITH THE DAY AND TEMPORARY LABOR SERVICE AND THE THIRD PARTY CLIENT.

3. "DAY AND TEMPORARY LABOR" MEANS LABOR OR EMPLOYMENT THAT IS OCCASIONAL OR IRREGULAR AT WHICH A PERSON IS EMPLOYED FOR NOT LONGER THAN THE TIME PERIOD REQUIRED TO COMPLETE THE ASSIGNMENT FOR WHICH THE PERSON WAS HIRED AND WHERE WAGE PAYMENTS ARE MADE DIRECTLY OR INDIRECTLY BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER OR THE THIRD PARTY CLIENT FOR WORK UNDERTAKEN BY DAY OR TEMPORARY LABORERS PURSUANT TO A CONTRACT BETWEEN THE DAY AND TEMPORARY LABOR SERVICE PROVIDER WITH THE THIRD PARTY CLIENT. "DAY AND TEMPORARY LABOR" DOES NOT INCLUDE LABOR OR EMPLOYMENT OF A PROFESSIONAL OR CLERICAL NATURE.

4. "THIRD PARTY CLIENT" MEANS ANY PERSON THAT CONTRACTS WITH A DAY AND TEMPORARY LABOR SERVICE PROVIDER FOR OBTAINING DAY OR TEMPORARY LABORERS.

5. "PERSON" MEANS EVERY INDIVIDUAL, FIRM, PARTNERSHIP, CO-PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, ASSOCIATION, BUSINESS TRUST, OR OTHER LEGAL ENTITY, OR ITS LEGAL REPRESENTATIVES, AGENTS, OR ASSIGNS.

6. "LOCKOUT" MEANS THE ACTION OF AN EMPLOYER PURSUANT TO A LABOR DISPUTE IN TEMPORARILY CLOSING A PLACE OF EMPLOYMENT OR PREVENTING AN EMPLOYEE OR EMPLOYEES FROM ENGAGING IN THEIR NORMAL COURSE OF EMPLOYMENT FOR THE PURPOSE OF INDUCING SETTLEMENT OF THE DISPUTE OR INFLUENCING THE CONDITIONS OF EMPLOYMENT TO BE AGREED ON.

7. "PROFESSIONAL STRIKEBREAKER" MEANS ANY PERSON WHO REPEATEDLY AND HABITUALLY OFFERS HIMSELF FOR EMPLOYMENT ON A TEMPORARY BASIS WHERE A LOCKOUT OR STRIKE EXISTS TO TAKE THE PLACE OF AN EMPLOYEE WHOSE WORK HAS CEASED AS A DIRECT CONSEQUENCE OF SUCH LOCKOUT OR STRIKE.

8. "STRIKE" MEANS THE CONCERTED ACTION OF EMPLOYEES PURSUANT TO A LABOR DISPUTE IN FAILING TO REPORT FOR WORK, ENGAGING IN THE STOPPAGE OF WORK, PICKETING (WHERE THE EFFECT OF SUCH PICKETING IS TO INDUCE ANY INDIVIDUAL NOT TO PICK UP, DELIVER OR TRANSPORT ANY GOODS OR NOT TO PERFORM ANY SERVICES), OR ABSTAINING FROM THE FULL AND PROPER PERFORMANCE OF THE DUTIES OF EMPLOYMENT FOR THE PURPOSE OF INDUCING SETTLEMENT OF THE DISPUTE OR INFLUENCING THE CONDITIONS OF EMPLOYMENT TO BE AGREED ON.

9. "PAYMENT INSTRUMENT" MEANS A PAYCHECK, PAYMENT VOUCHER OR OTHER NEGOTIABLE INSTRUMENT FROM AN EMPLOYER PROVIDED TO AN EMPLOYEE TO PAY FOR HOURS WORKED.

10. "CHECK CASHING SERVICE" MEANS A BUSINESS THAT FOR A FEE OFFERS TO CASH CHECKS OR OTHER PAYMENT INSTRUMENTS OR THAT ADVERTISES THAT IT CASHES CHECKS OR OTHER PAYMENT INSTRUMENTS.

11. "OFFICE WORKER" MEANS A PERSON EMPLOYED TO PERFORM CLERICAL, SECRETARIAL OR OTHER SEMI-SKILLED OR SKILLED WORK THAT IS PREDOMINANTLY PERFORMED IN AN OFFICE SETTING.

12. "SEARCH FIRM" MEANS ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, OR ASSOCIATION ENGAGED IN THE BUSINESS OF MANAGEMENT CONSULTING, MANAGEMENT SEARCH CONSULTING, OR PERSONNEL CONSULTING.

S 199-C. EMPLOYMENT OF STRIKEBREAKERS PROHIBITED. 1. NO PERSON SHALL KNOWINGLY EMPLOY ANY PROFESSIONAL STRIKEBREAKER IN THE PLACE OF AN

EMPLOYEE, WHOSE WORK HAS CEASED AS A DIRECT CONSEQUENCE OF A LOCKOUT OR STRIKE, OR KNOWINGLY CONTRACT WITH A DAY AND TEMPORARY LABOR SERVICE PROVIDER TO PROVIDE A REPLACEMENT FOR THE EMPLOYEE, DURING ANY PERIOD WHEN A LOCKOUT OR STRIKE IS IN PROGRESS. NOR SHALL ANY PROFESSIONAL STRIKEBREAKER TAKE OR OFFER TO TAKE THE PLACE IN EMPLOYMENT OF EMPLOYEES INVOLVED IN A LOCKOUT OR STRIKE.

2. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT THE CONTINUED EMPLOYMENT OF A DAY OR TEMPORARY LABORER BY AN EMPLOYER IF THE DAY OR TEMPORARY LABORER HAD ALREADY BEEN ASSIGNED TO WORK FOR THE EMPLOYER AT THE TIME THE STRIKE OR LOCKOUT BEGAN.

S 199-D. EXEMPTIONS. 1. NOT-FOR-PROFIT DAY LABOR CENTERS FUNDED BY THE STATE, WHICH CHARGE NO FEE FOR THEIR SERVICES, THAT HAVE BEEN ESTABLISHED TO PROVIDE AN ALTERNATIVE FOR DAY OR TEMPORARY LABORERS TO SOLICIT WORK ON STREET CORNERS, ARE NOT SUBJECT TO THE PROVISIONS OF THIS ARTICLE.

2. THE FOLLOWING AGENCIES THAT PROVIDE EMPLOYEES ON A SHORT-TERM OR OTHERWISE TEMPORARY BASIS ARE EXEMPT FROM COMPLYING WITH THE PROVISIONS OF THIS ARTICLE:

A. TEMPORARY SERVICES EMPLOYMENT AGENCIES WHERE ADVANCED APPLICATIONS, A SCREENING PROCESS AND JOB INTERVIEWS ARE REQUIRED;

B. A LABOR UNION HIRING HALL; AND

C. A LABOR BUREAU OR EMPLOYMENT OFFICE OPERATED BY A BUSINESS ENTITY FOR THE SOLE PURPOSE OF EMPLOYING A PERSON FOR ITS OWN USE.

3. A. A SEARCH FIRM IS NOT SUBJECT TO THE PROVISIONS OF THIS ARTICLE IF:

(I) THE SEARCH FIRM IS RETAINED BY, ACTS ON BEHALF OF, AND IS ONLY COMPENSATED BY THE EMPLOYER, PURSUANT TO A WRITTEN AGREEMENT SPECIFYING THE POSITION TO BE FILLED;

(II) IN NO INSTANCE WILL ANY INDIVIDUAL CANDIDATE WHO IS IDENTIFIED, APPRAISED, OR RECOMMENDED BY THE SEARCH FIRM FOR EMPLOYMENT BECOME LIABLE IN WHOLE OR IN PART TO PAY A FEE OF ANY KIND, DIRECTLY OR INDIRECTLY, ON ACCOUNT OF ANY SERVICE PERFORMED BY THE SEARCH FIRM;

(III) IN NO INSTANCE DOES THE SEARCH FIRM OR ITS AGENTS SOLICIT, PERSUADE, OR INDUCE ANY INDIVIDUAL TO TERMINATE EMPLOYMENT WITH AN EMPLOYER WITH WHOM THE SEARCH FIRM HAS PLACED THAT INDIVIDUAL; AND

(IV) THE SEARCH FIRM DOES NOT CARRY ON ANY OTHER ACTIVITY THAT COMES WITHIN THE DEFINITION OF DAY AND TEMPORARY SERVICE PROVIDER.

B. IF THE COMMISSIONER, AT ANY TIME, HAS REASON TO BELIEVE THAT THE SEARCH FIRM HAS NOT CONDUCTED ITS BUSINESS IN A MANNER CONSISTENT WITH THE CONDITIONS IN SUBPARAGRAPHS (I), (II), (III), AND (IV) OF PARAGRAPH A OF THIS SUBDIVISION, THE COMMISSIONER MAY INSPECT THE RELEVANT RECORDS OF THE SEARCH FIRM FOR THE PURPOSE OF CONFIRMING WHETHER THE SEARCH FIRM HAS MAINTAINED ITS EXEMPT STATUS DURING THE YEAR. IF IT IS DETERMINED, EITHER BY WRITTEN ADMISSION BY THE SEARCH FIRM OR BY A FINDING OF FACT IN A COURT OF LAW, THAT ANY OF THE FOUR CONDITIONS IN PARAGRAPH A OF THIS SUBDIVISION WERE NOT MET, THE SEARCH FIRM SHALL BE CONSIDERED A DAY AND TEMPORARY LABOR SERVICE PROVIDER. IF A DAY AND TEMPORARY LABOR SERVICE PROVIDER OFFERS SERVICES WHICH ARE THE SAME OR SIMILAR TO THOSE OFFERED BY A SEARCH FIRM, OR IF A SEARCH FIRM OFFERS SERVICES WHICH ARE THE SAME OR SIMILAR TO THOSE OFFERED BY A DAY AND TEMPORARY LABOR SERVICE PROVIDER, THE PERSON OR ENTITY OFFERING THESE COMBINED DAY AND TEMPORARY LABOR SERVICES AND SEARCH FIRM SERVICES SHALL IDENTIFY ITSELF TO THE PUBLIC BY DISPLAYING THE NAME FILED WITH THE COMMISSIONER AS A LICENSED DAY AND TEMPORARY LABOR SERVICE PROVIDER; PROVIDED, THAT NO SEARCH FIRM MAY OFFER LICENSED DAY AND TEMPORARY LABOR SERVICES AT THE SAME LOCATION.

C. NO EMPLOYER MAY REQUIRE ANY JOB CANDIDATE PLACED WITH THE EMPLOYER BY A SEARCH FIRM TO PAY, DIRECTLY OR INDIRECTLY, ALL OR PART OF THE SEARCH FIRM'S FEE.

S 199-E. EMPLOYMENT NOTICE. 1. WHENEVER A DAY AND TEMPORARY LABOR SERVICE PROVIDER AGREES TO SEND ONE OR MORE PERSONS TO WORK AS DAY OR TEMPORARY LABORERS, THE DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL PROVIDE TO EACH DAY OR TEMPORARY LABORER, AT THE TIME OF DISPATCH, A STATEMENT CONTAINING THE FOLLOWING ITEMS ON A FORM APPROVED BY THE DEPARTMENT:

A. THE NAME OF THE DAY OR TEMPORARY LABORER;

B. THE NAME AND NATURE OF THE WORK TO BE PERFORMED;

C. THE WAGES OFFERED;

D. THE NAME AND ADDRESS OF THE DESTINATION OF EACH DAY OR TEMPORARY LABORER;

E. TERMS OF TRANSPORTATION; AND

F. WHETHER A MEAL OR EQUIPMENT, OR BOTH, IS PROVIDED, EITHER BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER OR THE THIRD PARTY CLIENT, AND THE COST OF THE MEAL AND EQUIPMENT, IF ANY.

2. IF A DAY OR TEMPORARY LABORER IS ASSIGNED TO THE SAME ASSIGNMENT FOR MORE THAN ONE DAY, THE DAY AND TEMPORARY LABOR SERVICE PROVIDER IS REQUIRED TO PROVIDE THE EMPLOYMENT NOTICE ONLY ON THE FIRST DAY OF THE ASSIGNMENT AND ON ANY DAY THAT ANY OF THE TERMS LISTED ON THE EMPLOYMENT NOTICE ARE CHANGED.

3. A. IF THE DAY OR TEMPORARY LABORER IS NOT PLACED WITH A THIRD PARTY CLIENT OR OTHERWISE CONTRACTED TO WORK FOR THAT DAY, THE DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL, UPON REQUEST, PROVIDE THE DAY OR TEMPORARY LABORER WITH A CONFIRMATION THAT THE DAY OR TEMPORARY LABORER SOUGHT WORK, SIGNED BY AN EMPLOYEE OF THE DAY AND TEMPORARY LABOR SERVICE PROVIDER, WHICH SHALL INCLUDE THE NAME OF THE AGENCY, THE NAME AND ADDRESS OF THE DAY OR TEMPORARY LABORER, AND THE DATE AND THE TIME THAT THE DAY OR TEMPORARY LABORER RECEIVES THE CONFIRMATION.

B. NO DAY AND TEMPORARY LABOR SERVICE PROVIDER MAY SEND ANY DAY OR TEMPORARY LABORER TO ANY PLACE WHERE A STRIKE, A LOCKOUT, OR OTHER LABOR TROUBLE EXISTS.

C. THE DEPARTMENT SHALL RECOMMEND TO DAY AND TEMPORARY LABOR SERVICE AGENCIES THAT THOSE AGENCIES EMPLOY PERSONNEL WHO CAN EFFECTIVELY COMMUNICATE INFORMATION REQUIRED IN THIS SECTION TO DAY OR TEMPORARY LABORERS IN SPANISH OR ANY OTHER LANGUAGE THAT IS GENERALLY UNDERSTOOD IN THE LOCALE OF THE DAY AND TEMPORARY LABOR SERVICE PROVIDER.

S 199-F. RECORDKEEPING. 1. WHENEVER A DAY AND TEMPORARY LABOR SERVICE PROVIDER SENDS ONE OR MORE PERSONS TO WORK AS DAY OR TEMPORARY LABORERS, THE DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL KEEP THE FOLLOWING RECORDS RELATING TO THAT TRANSACTION:

A. THE NAME, ADDRESS AND TELEPHONE NUMBER OF EACH THIRD PARTY CLIENT, INCLUDING EACH WORKSITE, TO WHICH DAY OR TEMPORARY LABORERS WERE SENT BY THE PROVIDER AND THE DATE OF THE TRANSACTION;

B. FOR EACH DAY OR TEMPORARY LABORER: THE NAME AND ADDRESS, THE SPECIFIC LOCATION SENT TO WORK, THE TYPE OF WORK PERFORMED, THE NUMBER OF HOURS WORKED, THE HOURLY RATE OF PAY AND THE DATE SENT;

C. THE NAME AND TITLE OF THE INDIVIDUAL OR INDIVIDUALS AT EACH THIRD PARTY CLIENT'S PLACE OF BUSINESS RESPONSIBLE FOR THE TRANSACTION;

D. ANY SPECIFIC QUALIFICATIONS OR ATTRIBUTES OF A DAY OR TEMPORARY LABORER, REQUESTED BY EACH THIRD PARTY CLIENT;

E. COPIES OF ALL CONTRACTS, IF ANY, WITH THE THIRD PARTY CLIENT AND COPIES OF ALL INVOICES FOR THE THIRD PARTY CLIENT;

F. COPIES OF ALL EMPLOYMENT NOTICES PROVIDED TO ANY DAY OR TEMPORARY LABORER;

G. DEDUCTIONS TO BE MADE FROM EACH DAY OR TEMPORARY LABORER'S COMPENSATION MADE BY EITHER THE THIRD PARTY CLIENT OR BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER FOR THE DAY OR TEMPORARY LABORER'S TRANSPORTATION, FOOD, EQUIPMENT, AND EVERY OTHER DEDUCTION;

H. VERIFICATION OF THE ACTUAL COST OF ANY EQUIPMENT OR MEAL CHARGED TO A DAY OR TEMPORARY LABORER;

I. THE RACE AND GENDER OF EACH DAY OR TEMPORARY LABORER SENT BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER, AS PROVIDED BY THE DAY OR TEMPORARY LABORER; AND

J. ANY ADDITIONAL INFORMATION REQUIRED BY RULES AND REGULATIONS ISSUED BY THE DEPARTMENT.

2. THE DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL MAINTAIN ALL RECORDS UNDER THIS SECTION FOR A PERIOD OF THREE YEARS FROM THEIR CREATION. THE RECORDS SHALL BE OPEN TO INSPECTION BY THE DEPARTMENT DURING NORMAL BUSINESS HOURS. RECORDS DESCRIBED IN THIS SECTION SHALL BE AVAILABLE FOR REVIEW OR COPYING BY THE DAY OR TEMPORARY LABORER DURING NORMAL BUSINESS HOURS WITHIN FIVE DAYS FOLLOWING A WRITTEN REQUEST. IN ADDITION, A DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL KEEP RECORDS RELATED TO THE NUMBER OF HOURS BILLED TO A THIRD PARTY CLIENT FOR THAT INDIVIDUAL DAY OR TEMPORARY LABORER'S HOURS OF WORK AND SHALL MAKE SUCH RECORDS AVAILABLE FOR REVIEW OR COPYING DURING NORMAL BUSINESS HOURS WITHIN FIVE DAYS FOLLOWING A WRITTEN REQUEST. THE DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL MAKE FORMS, IN DUPLICATE, FOR SUCH REQUESTS AVAILABLE TO DAY OR TEMPORARY LABORERS AT THE DISPATCH OFFICE. THE DAY OR TEMPORARY LABORER SHALL BE GIVEN A COPY OF THE REQUEST FORM. IT IS A VIOLATION OF THIS SECTION TO MAKE ANY FALSE, INACCURATE OR INCOMPLETE ENTRY INTO ANY RECORD REQUIRED BY THIS SECTION, OR TO DELETE REQUIRED INFORMATION FROM ANY SUCH RECORD.

S 199-G. MEALS, TRANSPORTATION, AND EQUIPMENT. 1. A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR THIRD PARTY CLIENT SHALL NOT CHARGE A DAY OR TEMPORARY LABORER FOR ANY MEAL NOT CONSUMED BY THE DAY OR TEMPORARY LABORER AND, IF CONSUMED, NO MORE THAN THE ACTUAL COST OF A MEAL. IN NO CASE SHALL THE PURCHASE OF A MEAL BE A CONDITION OF EMPLOYMENT FOR A DAY OR TEMPORARY LABORER.

2. A. A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR A THIRD PARTY CLIENT OR A CONTRACTOR OR AGENT OF EITHER EMPLOYER SHALL CHARGE NO FEE MORE THAN THE ACTUAL COST TO TRANSPORT A DAY OR TEMPORARY LABORER TO OR FROM THE DESIGNATED WORK SITE.

B. A DAY AND TEMPORARY LABOR SERVICE PROVIDER IS RESPONSIBLE FOR THE CONDUCT AND PERFORMANCE OF ANY PERSON WHO TRANSPORTS A DAY OR TEMPORARY LABORER FROM THE AGENCY TO A WORK SITE, UNLESS THE TRANSPORTER IS:

(I) A PUBLIC MASS TRANSPORTATION SYSTEM;

(II) A COMMON CARRIER;

(III) THE DAY OR TEMPORARY LABORER PROVIDING HIS OR HER OWN TRANSPORTATION; OR

(IV) SELECTED EXCLUSIVELY BY AND AT THE SOLE CHOICE OF THE DAY OR TEMPORARY LABORER FOR TRANSPORTATION IN A VEHICLE NOT OWNED OR OPERATED BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER.

C. IF ANY DAY AND TEMPORARY LABOR SERVICE PROVIDER PROVIDES TRANSPORTATION TO A DAY OR TEMPORARY LABORER OR REFERS A DAY OR TEMPORARY LABORER AS PROVIDED IN PARAGRAPH D OF THIS SUBDIVISION, THE DAY AND TEMPORARY LABOR SERVICE PROVIDER MAY NOT ALLOW A MOTOR VEHICLE TO BE USED FOR THE TRANSPORTING OF DAY OR TEMPORARY LABORERS IF THE PROVIDER KNEW OR SHOULD HAVE KNOWN THAT THE MOTOR VEHICLE USED FOR THE TRANSPORTATION OF DAY OR

TEMPORARY LABORERS IS UNSAFE OR NOT EQUIPPED AS REQUIRED BY THIS ARTICLE OR BY ANY RULE OR REGULATION ADOPTED PURSUANT TO THIS ARTICLE, UNLESS THE VEHICLE IS:

(I) THE PROPERTY OF A PUBLIC MASS TRANSPORTATION SYSTEM;

(II) THE PROPERTY OF A COMMON CARRIER;

(III) THE DAY OR TEMPORARY LABORER'S PERSONAL VEHICLE; OR

(IV) A VEHICLE OF A DAY OR TEMPORARY LABORER USED TO CARPOOL OTHER DAY OR TEMPORARY LABORERS AND WHICH IS SELECTED EXCLUSIVELY BY AND AT THE SOLE CHOICE OF THE DAY OR TEMPORARY LABORER FOR TRANSPORTATION.

D. A DAY AND TEMPORARY LABOR SERVICE PROVIDER MAY NOT REFER A DAY OR TEMPORARY LABORER TO ANY PERSON FOR TRANSPORTATION TO A WORK SITE UNLESS THAT PERSON IS:

(I) AN EMPLOYEE OF A PUBLIC MASS TRANSPORTATION SYSTEM; OR

(II) PROVIDING THE TRANSPORTATION AT NO FEE.

DIRECTING THE DAY OR TEMPORARY LABORER TO ACCEPT A SPECIFIC CAR POOL AS A CONDITION OF WORK SHALL BE CONSIDERED A REFERRAL BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER. ANY MENTION OR DISCUSSION OF THE COST OF A CAR POOL SHALL BE CONSIDERED A REFERRAL BY THE AGENCY. INFORMING A DAY OR TEMPORARY LABORER OF THE AVAILABILITY OF A CAR POOL DRIVEN BY ANOTHER DAY OR TEMPORARY LABORER SHALL NOT BE CONSIDERED A REFERRAL BY THE AGENCY.

E. ANY MOTOR VEHICLE THAT IS OWNED OR OPERATED BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER OR A THIRD PARTY CLIENT, OR A CONTRACTOR OR AGENT OF EITHER, OR TO WHICH A DAY AND TEMPORARY LABOR SERVICE PROVIDER REFERS A DAY OR TEMPORARY LABORER, WHICH IS USED FOR THE TRANSPORTATION OF DAY OR TEMPORARY LABORERS, SHALL HAVE PROOF OF FINANCIAL RESPONSIBILITY AS REQUIRED BY THE DEPARTMENT OF MOTOR VEHICLES. THE DRIVER OF THE VEHICLE SHALL HOLD A VALID LICENSE TO OPERATE MOTOR VEHICLES IN THE CORRECT CLASSIFICATION AND SHALL BE REQUIRED TO PRODUCE THE LICENSE IMMEDIATELY UPON DEMAND BY THE DEPARTMENT, ITS INSPECTORS OR DEPUTIES, OR ANY OTHER PERSON AUTHORIZED TO ENFORCE THE PROVISIONS OF THIS ARTICLE. THE DEPARTMENT SHALL FORWARD VIOLATIONS OF THIS SECTION TO THE APPROPRIATE LAW ENFORCEMENT AUTHORITIES OR REGULATORY AGENCIES, WHICHEVER IS APPLICABLE.

F. NO MOTOR VEHICLE THAT IS OWNED OR OPERATED BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER OR A THIRD PARTY CLIENT, OR CONTRACTOR OR AGENT OF EITHER, OR TO WHICH A DAY AND TEMPORARY LABOR SERVICE PROVIDER REFERS A DAY OR TEMPORARY LABORER, WHICH IS USED FOR THE TRANSPORTATION OF DAY OR TEMPORARY LABORERS MAY BE OPERATED IF IT DOES NOT HAVE A SEAT AND A SAFETY BELT FOR EACH PASSENGER. THE DEPARTMENT SHALL FORWARD VIOLATIONS OF THIS SECTION TO THE APPROPRIATE LAW ENFORCEMENT AUTHORITIES OR REGULATORY AGENCIES, WHICHEVER IS APPLICABLE.

3. FOR ANY SAFETY EQUIPMENT, CLOTHING, ACCESSORIES, OR ANY OTHER ITEMS REQUIRED BY THE NATURE OF THE WORK, EITHER BY LAW, CUSTOM, OR AS A REQUIREMENT OF THE THIRD PARTY CLIENT, THE DAY AND TEMPORARY LABOR SERVICE PROVIDER OR THE THIRD PARTY CLIENT MAY CHARGE THE DAY OR TEMPORARY LABORER THE MARKET VALUE OF THE ITEM TEMPORARILY PROVIDED TO THE DAY OR TEMPORARY LABORER BY THE THIRD PARTY CLIENT IF THE DAY OR TEMPORARY LABORER FAILS TO RETURN SUCH ITEMS TO THE THIRD PARTY CLIENT OR THE DAY AND TEMPORARY LABOR SERVICE PROVIDER. FOR ANY OTHER EQUIPMENT, CLOTHING, ACCESSORIES, OR ANY OTHER ITEMS THE DAY AND TEMPORARY LABOR SERVICE PROVIDER MAKES AVAILABLE FOR PURCHASE, THE DAY OR TEMPORARY LABORER SHALL NOT BE CHARGED MORE THAN THE ACTUAL MARKET VALUE FOR THE ITEM.

S 199-H. WAGE PAYMENT AND NOTICE. 1. AT THE TIME OF PAYMENT OF WAGES, A DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL PROVIDE EACH DAY OR

TEMPORARY LABORER WITH A DETAILED ITEMIZED STATEMENT, ON THE DAY OR TEMPORARY LABORER'S PAYCHECK STUB OR ON A FORM APPROVED BY THE DEPARTMENT, LISTING THE FOLLOWING:

A. THE NAME, ADDRESS, AND TELEPHONE NUMBER OF EACH THIRD PARTY CLIENT AT WHICH THE DAY OR TEMPORARY LABORER WORKED. IF THIS INFORMATION IS PROVIDED ON THE DAY OR TEMPORARY LABORER'S PAYCHECK STUB, A CODE FOR EACH THIRD PARTY CLIENT MAY BE USED SO LONG AS THE REQUIRED INFORMATION FOR EACH CODED THIRD PARTY CLIENT IS MADE AVAILABLE TO THE DAY OR TEMPORARY LABORER;

B. THE NUMBER OF HOURS WORKED BY THE DAY OR TEMPORARY LABORER AT EACH THIRD PARTY CLIENT EACH DAY DURING THE PAY PERIOD;

C. THE RATE OF PAYMENT FOR EACH HOUR WORKED, INCLUDING ANY PREMIUM RATE OR BONUS;

D. THE TOTAL PAY PERIOD EARNINGS;

E. ALL DEDUCTIONS MADE FROM THE DAY OR TEMPORARY LABORER'S COMPENSATION MADE EITHER BY THE THIRD PARTY CLIENT OR BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER, AND THE PURPOSE FOR WHICH DEDUCTIONS WERE MADE, INCLUDING FOR THE DAY OR TEMPORARY LABORER'S TRANSPORTATION, FOOD, EQUIPMENT, AND EVERY OTHER DEDUCTION; AND

F. ANY ADDITIONAL INFORMATION REQUIRED BY RULES OR REGULATIONS ISSUED BY THE DEPARTMENT.

2. FOR EACH DAY OR TEMPORARY LABORER WHO IS CONTRACTED TO WORK A SINGLE DAY, THE THIRD PARTY CLIENT SHALL, AT THE END OF THE WORK DAY, PROVIDE SUCH DAY OR TEMPORARY LABORER WITH A WORK VERIFICATION FORM, APPROVED BY THE DEPARTMENT, WHICH SHALL CONTAIN THE DATE, THE DAY OR TEMPORARY LABORER'S NAME, THE WORK LOCATION, AND THE HOURS WORKED ON THAT DAY. ANY THIRD PARTY CLIENT WHO VIOLATES THIS SECTION MAY BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION, AND UP TO TWO THOUSAND FIVE HUNDRED DOLLARS FOR EACH SUBSEQUENT VIOLATION. EACH DAY OR TEMPORARY LABORER WHO IS NOT PROVIDED THE PROPER PAPERWORK REQUIRED BY THIS SECTION SHALL CONSTITUTE A SEPARATE AND DISTINCT VIOLATION. EACH DAY A VIOLATION CONTINUES SHALL CONSTITUTE A SEPARATE AND DISTINCT VIOLATION.

3. A DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL PROVIDE EACH WORKER AN ANNUAL EARNINGS SUMMARY WITHIN A REASONABLE TIME AFTER THE PRECEDING CALENDAR YEAR, BUT IN NO CASE LATER THAN FEBRUARY FIRST OF SUCH YEAR. A DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL, AT THE TIME OF EACH WAGE PAYMENT, GIVE NOTICE TO DAY OR TEMPORARY LABORERS OF THE AVAILABILITY OF THE ANNUAL EARNINGS SUMMARY OR POST SUCH A NOTICE IN A CONSPICUOUS PLACE IN THE PUBLIC RECEPTION AREA.

4. AT THE REQUEST OF A DAY OR TEMPORARY LABORER, A DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL HOLD THE DAILY WAGES OF THE DAY OR TEMPORARY LABORER AND MAKE EITHER WEEKLY, BI-WEEKLY, OR SEMI-MONTHLY PAYMENTS. THE WAGES SHALL BE PAID IN A SINGLE CHECK, OR, AT THE DAY OR TEMPORARY LABORER'S SOLE OPTION, BY DIRECT DEPOSIT OR OTHER MANNER APPROVED BY THE DEPARTMENT, REPRESENTING THE WAGES EARNED DURING THE PERIOD, EITHER WEEKLY, BI-WEEKLY, OR SEMI-MONTHLY, DESIGNATED BY THE DAY OR TEMPORARY LABORER. VOUCHERS OR ANY OTHER METHOD OF PAYMENT WHICH IS NOT GENERALLY NEGOTIABLE SHALL BE PROHIBITED AS A METHOD OF PAYMENT OF WAGES. DAY AND TEMPORARY LABOR SERVICE AGENCIES THAT MAKE DAILY WAGE PAYMENTS SHALL PROVIDE WRITTEN NOTIFICATION TO ALL DAY OR TEMPORARY LABORERS OF THE RIGHT TO REQUEST WEEKLY, BI-WEEKLY, OR SEMI-MONTHLY CHECKS. THE DAY AND TEMPORARY LABOR SERVICE PROVIDER MAY PROVIDE THIS NOTICE BY CONSPICUOUSLY POSTING THE NOTICE AT THE LOCATION WHERE THE WAGES ARE RECEIVED BY THE DAY OR TEMPORARY LABORERS.

5. NO DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL CHARGE ANY DAY OR TEMPORARY LABORER FOR CASHING A CHECK ISSUED BY THE AGENCY FOR WAGES EARNED BY A DAY OR TEMPORARY LABORER WHO PERFORMED WORK THROUGH THAT AGENCY.

6. DAY OR TEMPORARY LABORERS SHALL BE PAID NO LESS THAN THE WAGE RATE STATED IN THE NOTICE FOR ALL THE WORK PERFORMED ON BEHALF OF THE THIRD PARTY CLIENT IN ADDITION TO THE WORK LISTED IN THE WRITTEN DESCRIPTION.

7. THE TOTAL AMOUNT DEDUCTED FOR MEALS, EQUIPMENT, AND TRANSPORTATION MAY NOT CAUSE A DAY OR TEMPORARY LABORER'S HOURLY WAGE TO FALL BELOW THE STATE OR FEDERAL MINIMUM WAGE. HOWEVER, A DAY AND TEMPORARY LABOR SERVICE PROVIDER MAY DEDUCT THE ACTUAL MARKET VALUE OF REUSABLE EQUIPMENT PROVIDED TO THE DAY OR TEMPORARY LABORER BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER WHICH THE DAY OR TEMPORARY LABORER FAILS TO RETURN, IF THE DAY OR TEMPORARY LABORER PROVIDES A WRITTEN AUTHORIZATION FOR SUCH DEDUCTION AT THE TIME THE DEDUCTION IS MADE.

8. A DAY OR TEMPORARY LABORER WHO IS CONTRACTED BY A DAY AND TEMPORARY LABOR SERVICE PROVIDER TO WORK AT A THIRD PARTY CLIENT'S WORKSITE BUT IS NOT UTILIZED BY THE THIRD PARTY CLIENT SHALL BE PAID BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER FOR A MINIMUM OF FOUR HOURS OF PAY AT THE AGREED UPON RATE OF PAY. HOWEVER, IN THE EVENT THE DAY AND TEMPORARY LABOR SERVICE PROVIDER CONTRACTS THE DAY OR TEMPORARY LABORER TO WORK AT ANOTHER LOCATION DURING THE SAME SHIFT, THE DAY OR TEMPORARY LABORER SHALL BE PAID BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER FOR A MINIMUM OF TWO HOURS OF PAY AT THE AGREED UPON RATE OF PAY.

S 199-I. PUBLIC ACCESS AREA. EACH DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL PROVIDE ADEQUATE SEATING IN THE PUBLIC ACCESS AREA OF THE OFFICES OF THE SERVICE. THE PUBLIC ACCESS AREA SHALL BE THE LOCATION FOR ALL NOTICES REQUIRED BY THIS ARTICLE AND ANY OTHER STATE OR FEDERALLY MANDATED POSTING. THE PUBLIC ACCESS AREA SHALL ALLOW FOR ACCESS TO RESTROOMS AND WATER.

S 199-J. WORK RESTRICTION. NO DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL RESTRICT THE RIGHT OF A DAY OR TEMPORARY LABORER TO ACCEPT A PERMANENT POSITION WITH A THIRD PARTY CLIENT TO WHOM THE DAY OR TEMPORARY LABORER HAS BEEN REFERRED FOR WORK OR RESTRICT THE RIGHT OF SUCH THIRD PARTY CLIENT TO OFFER SUCH EMPLOYMENT TO A DAY OR TEMPORARY LABORER. A DAY AND TEMPORARY LABOR SERVICE PROVIDER MAY CHARGE A PLACEMENT FEE TO A THIRD PARTY CLIENT FOR EMPLOYING A DAY OR TEMPORARY LABORER FOR WHOM A CONTRACT FOR WORK WAS EFFECTED BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER NOT TO EXCEED THE EQUIVALENT OF THE TOTAL DAILY COMMISSION RATE THE DAY AND TEMPORARY LABOR SERVICE PROVIDER WOULD HAVE RECEIVED OVER A SIXTY-DAY PERIOD, REDUCED BY THE EQUIVALENT OF THE DAILY COMMISSION RATE THE DAY AND TEMPORARY LABOR SERVICE PROVIDER WOULD HAVE RECEIVED FOR EACH DAY THE DAY OR TEMPORARY LABORER HAS PERFORMED WORK FOR THE DAY AND TEMPORARY LABOR SERVICE PROVIDER IN THE PRECEDING TWELVE MONTHS. DAYS WORKED AT A DAY AND TEMPORARY LABOR SERVICE PROVIDER IN THE TWELVE MONTHS PRECEDING THE EFFECTIVE DATE OF THIS SECTION SHALL BE INCLUDED FOR PURPOSES OF CALCULATING THE MAXIMUM PLACEMENT FEE DESCRIBED IN THIS SECTION. HOWEVER, PLACEMENT OF A DAY OR TEMPORARY LABORER WHO IS CONTRACTED BY A DAY AND TEMPORARY LABOR SERVICE PROVIDER TO PROVIDE SKILLED LABOR SHALL NOT BE SUBJECT TO ANY PLACEMENT FEE CAP. FOR PURPOSES OF THIS SECTION, A DAY OR TEMPORARY LABORER WHO PERFORMS "SKILLED LABOR" SHALL APPLY ONLY WHERE THE DAY AND TEMPORARY LABOR SERVICE PROVIDER PERFORMS AN ADVANCED APPLICATION PROCESS, A SCREENING PROCESS, WHICH MAY INCLUDE PROCESSES SUCH AS ADVANCED TESTING, AND A JOB INTERVIEW. NO FEE PROVIDED FOR UNDER THIS SECTION MAY BE ASSESSED OR COLLECTED BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER WHEN THE DAY

OR TEMPORARY LABORER IS OFFERED PERMANENT WORK FOLLOWING THE SUSPENSION OR REVOCATION OF THE DAY AND TEMPORARY LABOR SERVICE PROVIDER'S REGISTRATION BY THE DEPARTMENT.

S 199-K. REGISTRATION. 1. A DAY AND TEMPORARY LABOR SERVICE PROVIDER THAT IS LOCATED, OPERATES, OR TRANSACTS BUSINESS WITHIN THIS STATE SHALL REGISTER WITH THE DEPARTMENT IN ACCORDANCE WITH RULES AND REGULATIONS ADOPTED BY THE DEPARTMENT FOR DAY AND TEMPORARY LABOR SERVICE PROVIDERS AND SHALL BE SUBJECT TO THE PROVISIONS OF THIS ARTICLE. EACH DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL PROVIDE PROOF OF AN EMPLOYER ACCOUNT NUMBER ISSUED BY THE DEPARTMENT FOR THE PAYMENT OF UNEMPLOYMENT INSURANCE CONTRIBUTIONS AS REQUIRED BY LAW, AND PROOF OF VALID WORKERS' COMPENSATION INSURANCE IN EFFECT AT THE TIME OF REGISTRATION COVERING ALL OF ITS EMPLOYEES. IF, AT ANY TIME, A DAY AND TEMPORARY LABOR SERVICE PROVIDER'S WORKERS' COMPENSATION INSURANCE COVERAGE LAPSES, THE PROVIDER SHALL HAVE AN AFFIRMATIVE DUTY TO REPORT THE LAPSE OF SUCH COVERAGE TO THE DEPARTMENT AND THE WORKERS' COMPENSATION BOARD AND THE PROVIDER'S REGISTRATION SHALL BE SUSPENDED UNTIL THE PROVIDER'S WORKERS' COMPENSATION INSURANCE IS REINSTATED. THE DEPARTMENT MAY ASSESS EACH DAY AND TEMPORARY LABOR SERVICE PROVIDER A NON-REFUNDABLE REGISTRATION FEE NOT EXCEEDING ONE THOUSAND DOLLARS PER YEAR PER PROVIDER AND A NON-REFUNDABLE FEE NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS FOR EACH OTHER LOCATION WHERE THE PROVIDER REGULARLY CONTRACTS WITH DAY OR TEMPORARY LABORERS FOR SERVICES. THE FEE MAY BE PAID BY CHECK OR MONEY ORDER AND THE DEPARTMENT MAY NOT REFUSE TO ACCEPT A CHECK ON THE BASIS THAT IT IS NOT A CERTIFIED CHECK OR A CASHIER'S CHECK. THE DEPARTMENT MAY CHARGE AN ADDITIONAL FEE TO BE PAID BY A DAY AND TEMPORARY LABOR SERVICE PROVIDER IF THE PROVIDER, OR ANY PERSON ON THE PROVIDER'S BEHALF, ISSUES OR DELIVERS A CHECK TO THE DEPARTMENT THAT IS NOT HONORED BY THE FINANCIAL INSTITUTION UPON WHICH IT IS DRAWN.

2. IT IS A VIOLATION OF THIS SECTION TO OPERATE A DAY AND TEMPORARY LABOR SERVICE WITHOUT FIRST REGISTERING WITH THE DEPARTMENT IN ACCORDANCE WITH SUBDIVISION ONE OF THIS SECTION. THE DEPARTMENT SHALL CREATE AND MAINTAIN AT REGULAR INTERVALS ON ITS WEBSITE, ACCESSIBLE TO THE PUBLIC:

A. A LIST OF ALL REGISTERED DAY AND TEMPORARY LABOR SERVICE AGENCIES IN THE STATE WHOSE REGISTRATION IS IN GOOD STANDING;

B. A LIST OF DAY AND TEMPORARY LABOR SERVICE AGENCIES IN THE STATE WHOSE REGISTRATION HAS BEEN SUSPENDED, INCLUDING THE REASON FOR THE SUSPENSION, THE DATE THE SUSPENSION WAS INITIATED, AND THE DATE, IF KNOWN, THE SUSPENSION IS TO BE LIFTED; AND

C. A LIST OF DAY AND TEMPORARY LABOR SERVICE AGENCIES IN THE STATE WHOSE REGISTRATION HAS BEEN REVOKED, INCLUDING THE REASON FOR THE REVOCATION AND THE DATE THE REGISTRATION WAS REVOKED.

3. THE DEPARTMENT IS AUTHORIZED TO ASSESS A PENALTY AGAINST ANY DAY AND TEMPORARY LABOR SERVICE PROVIDER THAT FAILS TO REGISTER WITH THE DEPARTMENT IN ACCORDANCE WITH THIS SECTION IN AN AMOUNT OF UP TO FIVE HUNDRED DOLLARS FOR EACH VIOLATION. EACH DAY DURING WHICH A DAY AND TEMPORARY LABOR SERVICE PROVIDER OPERATES WITHOUT REGISTERING WITH THE DEPARTMENT SHALL BE A SEPARATE AND DISTINCT VIOLATION.

4. AN APPLICANT IS NOT ELIGIBLE TO REGISTER TO OPERATE A DAY AND TEMPORARY LABOR SERVICE UNDER THIS SECTION IF THE APPLICANT OR ANY OF ITS OFFICERS, DIRECTORS, PARTNERS, OR MANAGERS OR ANY OWNER WITH A TWENTY-FIVE PERCENT OR GREATER BENEFICIAL INTEREST:

A. HAS BEEN INVOLVED, AS OWNER, OFFICER, DIRECTOR, PARTNER, OR MANAGER, OF ANY DAY AND TEMPORARY LABOR SERVICE WHOSE REGISTRATION HAS BEEN

REVOKED OR HAS BEEN SUSPENDED WITHOUT BEING REINSTATED WITHIN THE FIVE YEARS IMMEDIATELY PRECEDING THE FILING OF THE APPLICATION; OR

B. IS UNDER THE AGE OF EIGHTEEN.

5. EVERY DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL POST AND KEEP POSTED AT EACH LOCATION, IN A POSITION EASILY ACCESSIBLE TO ALL EMPLOYEES, NOTICES AS SUPPLIED AND REQUIRED BY THE DEPARTMENT CONTAINING COPIES OR SUMMARIES OF THE PROVISIONS OF THIS SECTION AND A NOTICE WHICH INFORMS THE PUBLIC OF A TOLL-FREE TELEPHONE NUMBER FOR DAY OR TEMPORARY LABORERS AND THE PUBLIC TO FILE WAGE DISPUTE COMPLAINTS AND OTHER ALLEGED VIOLATIONS BY DAY AND TEMPORARY LABOR SERVICE PROVIDERS. SUCH NOTICES SHALL BE POSTED IN ENGLISH, SPANISH, AND ANY OTHER LANGUAGE GENERALLY UNDERSTOOD IN THE LOCALE OF THE DAY AND TEMPORARY LABOR SERVICE PROVIDER.

S 199-L. VIOLATIONS, ENFORCEMENT, AND PENALTIES. 1. THE DEPARTMENT SHALL HAVE THE AUTHORITY TO DENY, SUSPEND, OR REVOKE THE REGISTRATION OF A DAY AND TEMPORARY LABOR SERVICE PROVIDER IF WARRANTED BY PUBLIC HEALTH AND SAFETY CONCERNS OR VIOLATIONS OF THIS ARTICLE.

2. IT SHALL BE THE DUTY OF THE DEPARTMENT TO ENFORCE THE PROVISIONS OF THIS ARTICLE. THE DEPARTMENT SHALL HAVE THE POWER TO CONDUCT INVESTIGATIONS IN CONNECTION WITH THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE AND ANY INVESTIGATOR WITH THE DEPARTMENT SHALL BE AUTHORIZED TO VISIT AND INSPECT, AT ALL REASONABLE TIMES, ANY PLACES SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND SHALL BE AUTHORIZED TO INSPECT, AT ALL REASONABLE TIMES, CONTRACTS FOR THE EMPLOYMENT OF ALL DAY OR TEMPORARY LABORERS ENTERED INTO BY A THIRD PARTY CLIENT IF THE DEPARTMENT HAS RECEIVED A COMPLAINT INDICATING THAT THE THIRD PARTY CLIENT MAY HAVE CONTRACTED WITH A DAY AND TEMPORARY LABOR SERVICE PROVIDER THAT IS NOT REGISTERED UNDER THIS ARTICLE.

3. THE DEPARTMENT SHALL CONDUCT HEARINGS UPON WRITTEN COMPLAINT BY AN INVESTIGATOR OF THE DEPARTMENT OR ANY INTERESTED PERSON OF A VIOLATION OF THIS ARTICLE. AFTER THE HEARING, IF SUPPORTED BY THE EVIDENCE, THE DEPARTMENT MAY:

A. ISSUE AND CAUSE TO BE SERVED ON ANY PARTY AN ORDER TO CEASE AND DESIST FROM FURTHER VIOLATIONS OF THIS ARTICLE;

B. TAKE AFFIRMATIVE OR OTHER ACTION AS DEEMED REASONABLE TO ELIMINATE THE EFFECT OF THE VIOLATION;

C. DENY, SUSPEND, OR REVOKE ANY REGISTRATION UNDER THIS ARTICLE; AND

D. DETERMINE THE AMOUNT OF ANY CIVIL PENALTY THAT SHOULD BE IMPOSED PURSUANT TO THIS ARTICLE. THE COMMISSIONER OR HIS OR HER REPRESENTATIVE MAY COMPEL, BY SUBPOENA, THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCTION OF BOOKS, PAYROLLS, RECORDS, PAPERS, AND OTHER EVIDENCE IN ANY INVESTIGATION OR HEARING AND MAY ADMINISTER OATHS TO WITNESSES. NOTHING IN THIS ARTICLE APPLIES TO LABOR OR EMPLOYMENT OF A CLERICAL OR PROFESSIONAL NATURE.

4. A. WHOEVER INTENTIONALLY VIOLATES ANY OF THE PROVISIONS OF THIS ARTICLE OR ANY RULE OR REGULATION ADOPTED THERETO, OR WHOEVER OBSTRUCTS THE DEPARTMENT, ITS INSPECTORS, OR ANY OTHER PERSON AUTHORIZED TO INSPECT PLACES SUBJECT TO THE PROVISIONS OF THIS ARTICLE SHALL BE LIABLE FOR PENALTIES UP TO DOUBLE THE AMOUNT IMPOSED PURSUANT TO THIS ARTICLE.

B. WHOEVER INTENTIONALLY VIOLATES ANY OF THE PROVISIONS OF THIS ARTICLE OR ANY RULE ADOPTED OR REGULATION ADOPTED THERETO THAT RESULTS IN AN UNDERPAYMENT TO A DAY OR TEMPORARY LABORER SHALL BE LIABLE TO THE DEPARTMENT FOR UP TO TWENTY PERCENT OF THE DAY AND TEMPORARY LABOR SERVICE PROVIDER'S OR THE THIRD PARTY CLIENT'S TOTAL UNDERPAYMENT AND SHALL ALSO BE LIABLE TO THE EMPLOYEE FOR PUNITIVE DAMAGES IN THE AMOUNT OF TWO PERCENT OF THE AMOUNT OF ANY SUCH UNDERPAYMENTS FOR EACH MONTH

FOLLOWING THE DATE OF PAYMENT DURING WHICH THE UNDERPAYMENTS REMAIN UNPAID.

C. THE COMMISSIONER MAY PROMULGATE RULES AND REGULATIONS FOR THE COLLECTION OF THESE PENALTIES. THE PENALTY SHALL BE IMPOSED IN CASES IN WHICH A DAY AND TEMPORARY LABOR SERVICE PROVIDER'S OR A THIRD PARTY CLIENT'S CONDUCT IS PROVEN BY A PREPONDERANCE OF THE EVIDENCE TO BE INTENTIONAL. THE PENALTY MAY BE RECOVERED IN A CIVIL ACTION BROUGHT BY THE COMMISSIONER IN ANY COURT OF COMPETENT JURISDICTION. IN ANY SUCH ACTION, THE COMMISSIONER SHALL BE REPRESENTED BY THE ATTORNEY GENERAL.

5. A. A DAY AND TEMPORARY LABOR SERVICE PROVIDER THAT VIOLATES ANY OF THE PROVISIONS OF THIS ARTICLE OR ANY RULE OR REGULATION ADOPTED THERETO SHALL BE SUBJECT TO THE PENALTY PROVIDED IN EACH SECTION, RESPECTIVELY, OR TO A CIVIL PENALTY NOT TO EXCEED SIX THOUSAND DOLLARS AND/OR ONE YEAR IN JAIL FOR ALL VIOLATIONS FOUND IN THE FIRST AUDIT BY THE DEPARTMENT. FOLLOWING THE FIRST AUDIT, A DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL BE SUBJECT TO A PENALTY NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS AND/OR THIRTY DAYS IN JAIL FOR EACH SUBSEQUENT VIOLATION FOUND BY THE DEPARTMENT WITHIN THREE YEARS. EACH OCCURRENCE OF A VIOLATION FOR WHICH A PERSON IS CONVICTED IS A SEPARATE OFFENSE. MULTIPLE VIOLATIONS ARISING FROM TRANSACTIONS WITH THE SAME PERSON OR MULTIPLE VIOLATIONS ARISING FROM TRANSACTIONS WITH DIFFERENT PEOPLE SHALL BE CONSIDERED SEPARATE OCCURRENCES.

B. IN ADDITION TO ANY OTHER FEES OR FINES THAT MAY BE IMPOSED ON AN OFFENDER CONVICTED PURSUANT TO THIS SECTION, THE COURT MAY ORDER THE OFFENDER TO PAY RESTITUTION. A DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL PAY DAY AND TEMPORARY LABORERS FOR ALL HOURS WORKED OR OTHERWISE DUE AND OWED TO THE DAY AND TEMPORARY LABORERS. A PERSON WHO FAILS TO PAY A DAY OR TEMPORARY LABORER FOR WORK PERFORMED OR TIME DUE IS LIABLE FOR FULL PAYMENT OF THE WAGES NOT PAID AND CIVIL DAMAGES EQUAL TO TWICE THE VALUE OF THE UNPAID WAGES, COURT COSTS AND ATTORNEY FEES AND COSTS.

C. IN DETERMINING THE AMOUNT OF A PENALTY TO BE LEVIED PURSUANT TO THIS SECTION, THE COMMISSIONER SHALL CONSIDER THE APPROPRIATENESS OF THE PENALTY TO THE DAY AND TEMPORARY LABOR SERVICE PROVIDER CHARGED, UPON THE DETERMINATION OF THE GRAVITY OF THE VIOLATIONS.

D. FOR ANY VIOLATION DETERMINED BY THE DEPARTMENT TO BE INTENTIONAL WHICH IS WITHIN THREE YEARS OF AN EARLIER VIOLATION, THE DEPARTMENT MAY REVOKE THE REGISTRATION OF THE VIOLATOR. THE AMOUNT OF THE PENALTY, WHEN FINALLY DETERMINED, MAY BE:

(I) RECOVERED IN A CIVIL ACTION BROUGHT BY THE COMMISSIONER IN ANY COURT OF COMPETENT JURISDICTION. IN THIS LITIGATION, THE COMMISSIONER SHALL BE REPRESENTED BY THE ATTORNEY GENERAL.

(II) ORDERED BY THE COURT, IN AN ACTION BROUGHT BY ANY PARTY FOR A VIOLATION UNDER THIS ARTICLE, TO BE PAID TO THE COMMISSIONER.

6. THE DEPARTMENT SHALL ADOPT RULES AND REGULATIONS FOR VIOLATION HEARINGS AND PENALTIES FOR VIOLATIONS OF THIS ARTICLE OR THE DEPARTMENT'S RULES AND REGULATIONS IN CONJUNCTION WITH THE PENALTIES SET FORTH IN THIS ARTICLE.

7. A. IT IS A VIOLATION OF THIS ARTICLE FOR A THIRD PARTY CLIENT TO ENTER INTO A CONTRACT FOR THE EMPLOYMENT OF DAY OR TEMPORARY LABORERS WITH ANY DAY AND TEMPORARY LABOR SERVICE PROVIDER NOT REGISTERED UNDER THIS ARTICLE. A THIRD PARTY CLIENT HAS A DUTY TO VERIFY A DAY AND TEMPORARY LABOR SERVICE PROVIDER'S STATUS WITH THE DEPARTMENT ON MARCH FIRST AND SEPTEMBER FIRST OF EACH YEAR. A DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL BE REQUIRED TO PROVIDE EACH OF ITS THIRD PARTY CLIENTS WITH PROOF OF VALID REGISTRATION ISSUED BY THE DEPARTMENT AT THE TIME OF ENTERING INTO A CONTRACT. A DAY AND TEMPORARY LABOR SERVICE PROVIDER

SHALL BE REQUIRED TO NOTIFY, BOTH BY TELEPHONE AND IN WRITING, EACH DAY AND TEMPORARY LABORER IT EMPLOYS AND EACH THIRD PARTY CLIENT WITH WHOM IT HAS A CONTRACT WITHIN TWENTY-FOUR HOURS OF ANY DENIAL, SUSPENSION, OR REVOCATION OF ITS REGISTRATION BY THE DEPARTMENT. ALL CONTRACTS BETWEEN ANY DAY AND TEMPORARY LABOR SERVICE PROVIDER AND ANY THIRD PARTY CLIENT SHALL BE CONSIDERED NULL AND VOID FROM THE DATE ANY SUCH DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION BECOMES EFFECTIVE AND UNTIL SUCH TIME AS THE DAY AND TEMPORARY LABOR SERVICE PROVIDER BECOMES REGISTERED AND CONSIDERED IN GOOD STANDING BY THE DEPARTMENT. UPON REQUEST, THE DEPARTMENT SHALL PROVIDE TO A THIRD PARTY CLIENT A LIST OF ENTITIES REGISTERED AS DAY AND TEMPORARY LABOR SERVICE PROVIDERS. THE DEPARTMENT SHALL PROVIDE ON THE INTERNET A LIST OF ENTITIES REGISTERED AS DAY AND TEMPORARY LABOR SERVICE PROVIDERS. A THIRD PARTY CLIENT MAY RELY ON INFORMATION PROVIDED BY THE DEPARTMENT OR MAINTAINED ON THE DEPARTMENT'S WEBSITE PURSUANT TO THIS ARTICLE AND SHALL BE HELD HARMLESS IF SUCH INFORMATION MAINTAINED OR PROVIDED BY THE DEPARTMENT WAS INACCURATE. ANY THIRD PARTY CLIENT THAT VIOLATES THIS PROVISION OF THIS ARTICLE IS SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS. EACH DAY DURING WHICH A THIRD PARTY CLIENT CONTRACTS WITH A DAY AND TEMPORARY LABOR SERVICE PROVIDER NOT REGISTERED UNDER THIS ARTICLE SHALL CONSTITUTE A SEPARATE AND DISTINCT OFFENSE.

B. IF A THIRD PARTY CLIENT LEASES OR CONTRACTS WITH A DAY AND TEMPORARY SERVICE PROVIDER FOR THE SERVICES OF A DAY OR TEMPORARY LABORER, THE THIRD PARTY CLIENT SHALL SHARE ALL LEGAL RESPONSIBILITY AND LIABILITY FOR THE PAYMENT OF WAGES.

S 199-M. CHECK CASHING; NOTICE OF FEES. 1. A CHECK CASHING SERVICE THAT IS A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR IS OPERATING WITHIN THE OFFICE OF A DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL NOT CHARGE A DAY OR TEMPORARY LABORER AN AMOUNT IN EXCESS OF TWO DOLLARS FOR CASHING A CHECK OR PAYMENT INSTRUMENT THAT IS ISSUED BY THE PROVIDER.

2. NO FEES MAY BE CHARGED FOR CASHING A CHECK OR PAYMENT INSTRUMENT UNLESS THE DAY OR TEMPORARY LABORER:

A. IS GIVEN THE OPTION OF BEING PAID WITH A CHECK OR PAYMENT INSTRUMENT THAT IS PAYABLE WITHOUT A FEE AT A LOCAL FINANCIAL INSTITUTION; AND

B. VOLUNTARILY ELECTS TO CASH THE CHECK OR PAYMENT INSTRUMENT AT THE DAY AND TEMPORARY LABOR SERVICE PROVIDER OR AT A CHECK CASHING SERVICE OPERATING WITHIN THE OFFICE OF THE DAY AND TEMPORARY LABOR SERVICE PROVIDER.

3. A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR A CHECK CASHING SERVICE THAT IS A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR IS OPERATING WITHIN THE OFFICE OF A DAY AND TEMPORARY LABOR SERVICE PROVIDER SHALL POST NOTICES IN THE AREA WHERE CASHING OF CHECKS OR PAYMENT INSTRUMENTS OCCURS. THE NOTICES SHALL BE CLEARLY VISIBLE AND EASILY READABLE AND SHALL STATE THE FEE FOR CASHING A CHECK OR PAYMENT INSTRUMENT. NOTICES SHALL BE POSTED IN ENGLISH, SPANISH AND ANY OTHER WRITTEN LANGUAGE WHERE A HIGH PERCENTAGE OF THE WORKERS SPEAK THAT LANGUAGE.

S 199-N. RETALIATION. 1. IT IS A VIOLATION OF THIS ARTICLE FOR A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR THIRD PARTY CLIENT, OR ANY AGENT OF A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR THIRD PARTY CLIENT, TO RETALIATE THROUGH DISCHARGE OR IN ANY OTHER MANNER AGAINST ANY DAY OR TEMPORARY LABORER FOR EXERCISING ANY RIGHTS GRANTED UNDER THIS ARTICLE. SUCH RETALIATION SHALL SUBJECT A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR THIRD PARTY CLIENT, OR BOTH, TO CIVIL PENALTIES PURSUANT TO THIS ARTICLE OR A PRIVATE CAUSE OF ACTION.

2. IT IS A VIOLATION OF THIS ARTICLE FOR A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR THIRD PARTY CLIENT TO RETALIATE AGAINST A DAY OR TEMPORARY LABORER FOR:

A. MAKING A COMPLAINT TO A DAY AND TEMPORARY LABOR SERVICE PROVIDER, TO A THIRD PARTY CLIENT, TO A CO-WORKER, TO A COMMUNITY ORGANIZATION, BEFORE A PUBLIC HEARING, OR TO A STATE OR FEDERAL AGENCY, THAT RIGHTS GUARANTEED UNDER THIS ARTICLE HAVE BEEN VIOLATED;

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

C. TESTIFYING OR PREPARING TO TESTIFY IN AN INVESTIGATION OR PROCEEDING UNDER THIS ARTICLE.

S 199-O. PRIVATE RIGHT OF ACTION. 1. A PERSON AGGRIEVED BY A VIOLATION OF THIS ARTICLE OR ANY RULE OR REGULATION ADOPTED THERETO BY A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR A THIRD PARTY CLIENT MAY FILE SUIT IN A COURT OF COMPETENT JURISDICTION IN THE STATE, IN THE COUNTY WHERE THE ALLEGED OFFENSE OCCURRED OR WHERE ANY DAY OR TEMPORARY LABORER WHO IS PARTY TO THE ACTION RESIDES, WITHOUT REGARD TO EXHAUSTION OF ANY ALTERNATIVE ADMINISTRATIVE REMEDIES PROVIDED IN THIS ARTICLE. ACTIONS MAY BE BROUGHT BY ONE OR MORE DAY OR TEMPORARY LABORERS FOR AND ON BEHALF OF THEMSELVES AND OTHER DAY OR TEMPORARY LABORERS SIMILARLY SITUATED. A DAY OR TEMPORARY LABORER WHOSE RIGHTS HAVE BEEN VIOLATED UNDER THIS ARTICLE BY A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR A THIRD PARTY CLIENT IS ENTITLED TO COLLECT:

A. IN THE CASE OF A HEALTH AND SAFETY OR NOTICE VIOLATION, COMPENSATORY DAMAGES AND AN AMOUNT UP TO FIVE HUNDRED DOLLARS FOR EACH VIOLATION OF THIS ARTICLE;

B. IN THE CASE OF UNLAWFUL RETALIATION, ALL LEGAL OR EQUITABLE RELIEF AS MAY BE APPROPRIATE; AND

C. IN ALL CASES, THE DAY OR TEMPORARY LABORER MUST BE AWARDED REASONABLE ATTORNEY'S FEES AND COURT COSTS.

2. THE RIGHT OF AN AGGRIEVED PERSON TO BRING AN ACTION UNDER THIS SECTION TERMINATES UPON THE PASSING OF THREE YEARS FROM THE FINAL DATE OF EMPLOYMENT BY THE DAY AND TEMPORARY LABOR SERVICE PROVIDER OR THE THIRD PARTY CLIENT. THIS LIMITATIONS PERIOD IS TOLLED IF A DAY AND TEMPORARY LABOR SERVICE PROVIDER OR THIRD PARTY CLIENT HAS DETERRED A DAY OR TEMPORARY LABORER'S EXERCISE OF RIGHTS UNDER THIS ARTICLE BY CONTACTING OR THREATENING TO CONTACT LAW ENFORCEMENT AGENCIES.

S 4. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided, however, that effective immediately the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date is hereby authorized and directed to be made on or before such effective date.