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

6335--B

I N S E N A T E

January 27, 2012

Introduced by Sens. ESPAILLAT, AVELLA, STAVISKY -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to raising the statutory minimum wage

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

Section 1. Paragraph (n) of subdivision 5 of section 651 of the labor law, as amended by chapter 481 of the laws of 2010, is amended to read as follows:

(n) by [a] THE federal[, state or municipal] government [or political subdivision thereof]. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner; or

S 2. Subdivision 6 of section 651 of the labor law, as amended by chapter 281 of the laws of 2002, is amended to read as follows:

6. "Employer" includes any individual, partnership, association, corporation, limited liability company, business trust, legal representative, STATE OR MUNICIPAL GOVERNMENT OR POLITICAL SUBDIVISION THEREOF, or any organized group of persons acting as employer.

S 3. Subdivisions 1, 4 and 5 of section 652 of the labor law, as amended by chapter 747 of the laws of 2004, are amended to read as follows:

1. Statutory. Every employer shall pay to each of its employees for each hour worked a wage of not less than:

$4.25 on and after April 1, 1991
$5.15 on and after March 31, 2000,
$6.00 on and after January 1, 2005,
$6.75 on and after January 1, 2006,
$7.15 on and after January 1, 2007,
$8.50 ON AND AFTER JANUARY 1, 2013,

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

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$9.25 ON AND AFTER JANUARY 1, 2014,

AND ON AND AFTER JANUARY 1, 2015 AND ON EACH FOLLOWING JANUARY FIRST, AN ADJUSTED MINIMUM WAGE RATE THAT THE COMMISSIONER SHALL CALCULATE AND ESTABLISH BY INCREASING THE THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD THAT IS AVAILABLE AT THE TIME THE ADJUSTED MINIMUM WAGE RATE IS CALCULATED AND ANNOUNCED USING THE CONSUMER PRICE INDEX (URBAN WAGE EARNERS AND CLERICAL WORKERS, ALL ITEMS, NY-NJ-CT-PA, NOT SEASONALLY ADJUSTED), OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, ROUNDED TO THE NEAREST MULTIPLE OF FIVE CENTS, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

4. Notwithstanding subdivisions one and two of this section, the wage for an employee who is a food service worker receiving tips shall be a cash wage of at least three dollars and thirty cents per hour on or after March thirty-first, two thousand; three dollars and eighty-five cents on or after January first, two thousand five; at least four dollars and thirty-five cents on or after January first, two thousand six; [and] at least four dollars and sixty cents on or after January first, two thousand seven; AND AT LEAST FIVE DOLLARS AND EIGHTY-FIVE CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN; AND AT LEAST SIX DOLLARS AND FORTY CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN AND ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN AND ON EACH FOLLOWING JANUARY FIRST, AN ADJUSTED MINIMUM WAGE RATE THAT THE COMMISSIONER SHALL CALCULATE AND ESTABLISH BY INCREASING THE THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE AT THE TIME THE ADJUSTED MINIMUM WAGE RATE IS CALCULATED AND ANNOUNCED USING THE CONSUMER PRICE INDEX (URBAN WAGE EARNERS AND CLERICAL WORKERS, ALL ITEMS, NY-NJ-CT-PA, NOT SEASONALLY ADJUSTED), OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, ROUNDED TO THE NEAREST MULTIPLE OF FIVE CENTS, provided that the tips of such an employee, when added to such cash wage, are equal to or exceed the minimum wage in effect pursuant to subdivision one of this section and provided further that no other cash wage is established pursuant to section six hundred fifty-three of this article. In the event the cash wage payable under the Fair Labor Standards Act (29 United States Code Sec. 203 (m), as amended), is increased after enactment of this subdivision, the cash wage payable under this subdivision shall automatically be increased by the proportionate increase in the cash wage payable under such federal law, and will be immediately enforceable as the cash wage payable to food service workers under this article.

5. Notwithstanding subdivisions one and two of this section, meal and lodging allowances for a food service worker receiving a cash wage amounting to three dollars and thirty cents per hour on or after March thirty-first, two thousand; three dollars and eighty-five cents on or after January first, two thousand five; four dollars and thirty-five cents on or after January first, two thousand six; [and] four dollars and sixty cents on or after January first, two thousand seven; FIVE DOLLARS AND EIGHTY-FIVE CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN; AND AT LEAST SIX DOLLARS AND FORTY CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN AND ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN AND ON EACH FOLLOWING JANUARY FIRST, AN ADJUSTED MINIMUM WAGE RATE THAT THE COMMISSIONER SHALL CALCULATE AND ESTABLISH BY INCREASING

THE THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE AT THE TIME THE ADJUSTED MINIMUM WAGE RATE IS CALCULATED AND ANNOUNCED USING THE CONSUMER PRICE INDEX (URBAN WAGE EARNERS AND CLERICAL WORKERS, ALL ITEMS, NY-NJ-CT-PA, NOT SEASONALLY ADJUSTED), OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, ROUNDED TO THE NEAREST MULTIPLE OF FIVE CENTS, shall not increase more than two-thirds of the increase required by subdivision two of this section as applied to state wage orders in effect pursuant to subdivision one of this section.

S 4. Section 665 of the labor law, as added by chapter 619 of the laws of 1960, is amended to read as follows:

S 665. Savings AND NON-PREEMPTION clause. 1. If any provision of this article or the application thereof to any person, employer, occupation or circumstance is held invalid, the remainder of the article and the application of such provision to other persons, employees, occupations, or circumstances shall not be affected thereby.

2. NOTHING IN THIS ARTICLE OR ANY OTHER PROVISION OF LAW SHALL BE DEEMED TO RESTRICT LOCAL GOVERNMENTS FROM REQUIRING PAYMENT OF HIGHER WAGES OR BENEFITS WITHIN THEIR GEOGRAPHIC BOUNDARIES.

S 5. This act shall take effect immediately.