

4129

2011-2012 Regular Sessions

I N S E N A T E

March 21, 2011

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to independent contractors

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 two new sections 196-b  
2 and 196-c to read as follows:  
3 S 196-B. DEFINITIONS. FOR PURPOSES OF THIS SECTION THE TERM:  
4 1. "COMPENSATION" MEANS THE EARNINGS OF AN INDEPENDENT CONTRACTOR.  
5 THE TERM "COMPENSATION" ALSO INCLUDES REIMBURSEMENT FOR EXPENSES.  
6 2. "INDEPENDENT CONTRACTOR" MEANS A SOLE PROPRIETOR WHO IS NOT AN  
7 EMPLOYEE AND WHO IS HIRED OR RETAINED BY A CLIENT FOR AN AMOUNT EQUAL TO  
8 OR GREATER THAN SIX HUNDRED DOLLARS.  
9 3. "CLIENT" INCLUDES A CORPORATION, LIMITED LIABILITY COMPANY, PART-  
10 NERSHIP, ASSOCIATION OR NON-PROFITMAKING ORGANIZATION CONTRACTING WITH  
11 AN INDEPENDENT CONTRACTOR IN ANY OCCUPATION, INDUSTRY, TRADE, BUSINESS  
12 OR SERVICE FOR COMPENSATION EQUAL TO OR GREATER THAN SIX HUNDRED  
13 DOLLARS. THE TERM "CLIENT" SHALL NOT INCLUDE A GOVERNMENTAL ENTITY,  
14 INCLUDING BUT NOT LIMITED TO, ANY AGENCY, BOARD, DEPARTMENT, COMMISSION  
15 OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF; AND CLIENT SHALL NOT  
16 INCLUDE A PERSON. THE TERM "CLIENT" SHALL NOT INCLUDE OWNERS OF ONE AND  
17 TWO-FAMILY DWELLINGS.  
18 S 196-C. PAYMENT OF INDEPENDENT CONTRACTORS. 1. AN INDEPENDENT  
19 CONTRACTOR SHALL BE PAID THE COMPENSATION EARNED IN ACCORDANCE WITH THE  
20 AGREED WORK TERMS BUT NOT LATER THAN THE LAST DAY OF THE MONTH FOLLOWING  
21 THE MONTH IN WHICH THE COMPENSATION IS EARNED. THE AGREED WORK TERMS  
22 SHALL BE REDUCED IN WRITING, SIGNED BY BOTH THE CLIENT AND THE INDEPEND-  
23 ENT CONTRACTOR, KEPT ON FILE BY THE CLIENT FOR A PERIOD OF NOT LESS THAN  
24 SIX YEARS AND MADE AVAILABLE TO THE COMMISSIONER UPON REQUEST. SUCH  
25 WRITING SHALL INCLUDE A DESCRIPTION OF HOW COMPENSATION EARNED AND PAYA-  
26 BLE SHALL BE CALCULATED. THE FAILURE OF A CLIENT TO PRODUCE SUCH WRITTEN

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

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1 WORK TERMS, UPON REQUEST OF THE COMMISSIONER, SHALL GIVE RISE TO A  
2 PRESUMPTION THAT THE TERMS THAT THE INDEPENDENT CONTRACTOR HAS PRESENTED  
3 ARE THE AGREED TERMS.

4 2. THE COMMISSIONER SHALL INVESTIGATE AND ATTEMPT TO ADJUST EQUITABLY  
5 CONTROVERSIES BETWEEN CLIENTS AND INDEPENDENT CONTRACTORS RELATING TO  
6 THIS SECTION.

7 3. THE COMMISSIONER MAY TAKE ASSIGNMENTS OF CLAIMS FOR COMPENSATION AS  
8 DEFINED IN SECTION ONE HUNDRED NINETY-SIX-B OF THIS ARTICLE FROM INDE-  
9 PENDENT CONTRACTORS OR THIRD PARTIES IN TRUST FOR SUCH INDEPENDENT  
10 CONTRACTORS OR FOR THE VARIOUS FUNDS FOR SUCH INDEPENDENT CONTRACTORS.  
11 ALL SUCH ASSIGNMENTS SHALL RUN TO THE COMMISSIONER AND HIS SUCCESSOR IN  
12 OFFICE. THE COMMISSIONER MAY SUE COMPANIES ON COMPENSATION CLAIMS THUS  
13 ASSIGNED. HE MAY JOIN IN A SINGLE ACTION ANY NUMBER OF COMPENSATION  
14 CLAIMS AGAINST THE SAME COMPANY.

15 4. ANY INDEPENDENT CONTRACTOR MAY FILE WITH THE COMMISSIONER A  
16 COMPLAINT REGARDING A VIOLATION OF THIS ARTICLE FOR AN INVESTIGATION OF  
17 SUCH COMPLAINT AND STATEMENT SETTING THE APPROPRIATE REMEDY, IF ANY.  
18 FAILURE OF A CLIENT TO KEEP ADEQUATE RECORDS SHALL NOT OPERATE AS A BAR  
19 TO FILING OF A COMPLAINT BY AN INDEPENDENT CONTRACTOR. IN SUCH A CASE  
20 THE CLIENT IN VIOLATION SHALL BEAR THE BURDEN OF PROVING THAT THE  
21 COMPLAINING INDEPENDENT CONTRACTOR WAS PAID COMPENSATION.

22 5. ON BEHALF OF ANY INDEPENDENT CONTRACTOR PAID LESS THAN THE COMPEN-  
23 SATION TO WHICH HE OR SHE IS ENTITLED UNDER THE AGREED WORK TERMS UNDER  
24 THE PROVISIONS OF THIS ARTICLE, THE COMMISSIONER MAY BRING ANY LEGAL  
25 ACTION NECESSARY, INCLUDING ADMINISTRATIVE ACTION, TO COLLECT SUCH CLAIM  
26 AND AS PART OF SUCH LEGAL ACTION, IN ADDITION TO ANY OTHER REMEDIES AND  
27 PENALTIES OTHERWISE AVAILABLE UNDER THIS ARTICLE, THE COMMISSIONER SHALL  
28 ASSESS AGAINST THE CLIENT AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES,  
29 UNLESS THE CLIENT PROVES A GOOD FAITH BASIS FOR BELIEVING THAT ITS  
30 UNDERPAYMENT OF COMPENSATION WAS IN COMPLIANCE WITH THE LAW. LIQUIDATED  
31 DAMAGES SHALL BE CALCULATED BY THE COMMISSIONER AS NO MORE THAN ONE  
32 HUNDRED PERCENT OF THE TOTAL AMOUNT OF COMPENSATION FOUND TO BE DUE. IN  
33 ANY ACTION INSTITUTED IN THE COURTS UPON A COMPENSATION CLAIM BY AN  
34 INDEPENDENT CONTRACTOR OR THE COMMISSIONER IN WHICH THE INDEPENDENT  
35 CONTRACTOR PREVAILS, THE COURT SHALL ALLOW SUCH INDEPENDENT CONTRACTOR  
36 ALL REASONABLE ATTORNEY'S FEES, PREJUDGMENT INTEREST AS REQUIRED UNDER  
37 THE CIVIL PRACTICE LAW AND RULES, AND, UNLESS THE CLIENT PROVES A GOOD  
38 FAITH BASIS TO BELIEVE THAT ITS UNDERPAYMENT OF COMPENSATION WAS IN  
39 COMPLIANCE WITH THE LAW, AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES  
40 EQUAL TO ONE HUNDRED PERCENT OF THE TOTAL AMOUNT OF COMPENSATION FOUND  
41 TO BE DUE. THE REMEDIES PROVIDED BY THIS ARTICLE MAY BE ENFORCED SIMUL-  
42 TANEOUSLY OR CONSECUTIVELY SO FAR AS NOT INCONSISTENT WITH EACH OTHER.

43 6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION TO RECOVER  
44 UPON A LIABILITY IMPOSED BY THIS ARTICLE MUST BE COMMENCED WITHIN SIX  
45 YEARS. ALL INDEPENDENT CONTRACTORS SHALL HAVE THE RIGHT TO RECOVER FULL  
46 COMPENSATION ACCRUED DURING THE SIX YEARS PREVIOUS TO THE COMMENCING OF  
47 SUCH ACTION, WHETHER SUCH ACTION IS INSTITUTED BY THE INDEPENDENT  
48 CONTRACTOR OR BY THE COMMISSIONER.

49 7. EACH INDEPENDENT CONTRACTOR WHO FILES A COMPLAINT REGARDING A  
50 VIOLATION OF A PROVISION OF THIS ARTICLE SHALL BE PROVIDED WITH A WRIT-  
51 TEN DESCRIPTION OF THE ANTICIPATED PROCESSING OF THE COMPLAINT, INCLUD-  
52 ING INVESTIGATION, CASE CONFERENCE, POTENTIAL CIVIL AND CRIMINAL PENAL-  
53 TIES, AND COLLECTION PROCEDURES.

54 8. EACH INDEPENDENT CONTRACTOR AND HIS OR HER REPRESENTATIVE SHALL BE  
55 NOTIFIED IN WRITING OF ANY CASE CONFERENCE BEFORE IT IS HELD AND GIVEN  
56 THE OPPORTUNITY TO ATTEND.

1 9. EACH INDEPENDENT CONTRACTOR AND HIS OR HER REPRESENTATIVE SHALL BE  
2 NOTIFIED IN WRITING OF ANY AWARD AND COLLECTION OF BACK COMPENSATION AND  
3 CIVIL PENALTIES, AND OF ANY INTENT TO SEEK CRIMINAL PENALTIES. IN THE  
4 EVENT THAT CRIMINAL PENALTIES ARE SOUGHT THE INDEPENDENT CONTRACTOR AND  
5 HIS OR HER REPRESENTATIVE SHALL BE NOTIFIED OF THE OUTCOME OF PROSE-  
6 CUTION.

7 10. IF THE COMMISSIONER DETERMINES THAT A CLIENT HAS VIOLATED A  
8 PROVISION OF THIS ARTICLE, OR A RULE OR REGULATION PROMULGATED THERE-  
9 UNDER, BY FAILING TO PAY THE COMPENSATION OF THEIR INDEPENDENT CONTRAC-  
10 TORS, THE COMMISSIONER SHALL ISSUE TO THE CLIENT AN ORDER DIRECTING  
11 COMPLIANCE THEREWITH, WHICH SHALL DESCRIBE PARTICULARLY THE NATURE OF  
12 THE ALLEGED VIOLATION, AND ORDER THE PAYMENT OF INTEREST AT THE RATE OF  
13 INTEREST THEN IN EFFECTED AS PRESCRIBED BY THE SUPERINTENDENT OF BANKS  
14 PURSUANT TO SECTION FOURTEEN-A OF THE BANKING LAW PER ANNUM FROM THE  
15 DATE OF THE UNDERPAYMENT TO THE DATE OF THE PAYMENT. IN ADDITION TO  
16 DIRECTING PAYMENT OF COMPENSATION FOUND TO BE DUE, SUCH ORDER, IF ISSUED  
17 TO A CLIENT WHO PREVIOUSLY HAS BEEN FOUND IN VIOLATION OF THOSE  
18 PROVISIONS, RULES OR REGULATIONS, OR TO A CLIENT WHOSE VIOLATION IS  
19 WILLFUL OR EGREGIOUS, SHALL DIRECT PAYMENT TO THE COMMISSIONER OF AN  
20 ADDITIONAL SUM AS A CIVIL PENALTY IN AN AMOUNT EQUAL TO DOUBLE THE TOTAL  
21 AMOUNT FOUND TO BE DUE.

22 11. EVERY CLIENT WHO DOES NOT PAY THE COMPENSATION OF ALL OF ITS INDE-  
23 PENDENT CONTRACTORS IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER,  
24 AND THE OFFICERS AND AGENTS OF ANY CLIENT WHO KNOWINGLY PERMIT THE  
25 CLIENT TO VIOLATE THIS CHAPTER BY FAILING TO PAY THE COMPENSATION OF ANY  
26 OF ITS INDEPENDENT CONTRACTORS IN ACCORDANCE WITH THE PROVISIONS THERE-  
27 OF, SHALL BE GUILTY OF A MISDEMEANOR FOR THE FIRST OFFENSE AND UPON  
28 CONVICTION THEREFOR SHALL BE FINED NOT LESS THAN FIVE HUNDRED NOR MORE  
29 THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR,  
30 AND, IN THE EVENT THAT ANY SECOND OR SUBSEQUENT OFFENSE OCCURS WITHIN  
31 SIX YEARS OF THE DATE OF CONVICTION FOR A PRIOR OFFENSE, SHALL BE GUILTY  
32 OF A FELONY FOR THE SECOND OR SUBSEQUENT OFFENSE, AND UPON CONVICTION  
33 THEREFOR, SHALL BE FINED NOT LESS THAN FIVE HUNDRED NOR MORE THAN TWENTY  
34 THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR PLUS ONE DAY,  
35 OR PUNISHED BY BOTH SUCH FINE AND IMPRISONMENT, FOR EACH SUCH OFFENSE.

36 S 2. This act shall take effect immediately.