

5885--B

2013-2014 Regular Sessions

I N S E N A T E

June 18, 2013

Introduced by Sens. SAVINO, TKACZYK -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- 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 increased penalties for violations of wage payment provisions and contractor accountability; to amend the limited liability company law, in relation to liability of members; and to amend the state finance law, in relation to establishing the wage theft prevention account

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

1 Section 1. Paragraph (a) of subdivision 1 of section 195 of the labor  
2 law, as amended by chapter 564 of the laws of 2010, is amended to read  
3 as follows:  
4 (a) provide his or her employees, in writing in English and in the  
5 language identified by each employee as the primary language of such  
6 employee, at the time of hiring[, and on or before February first of  
7 each subsequent year of the employee's employment with the employer], a  
8 notice containing the following information: the rate or rates of pay  
9 and basis thereof, whether paid by the hour, shift, day, week, salary,  
10 piece, commission, or other; allowances, if any, claimed as part of the  
11 minimum wage, including tip, meal, or lodging allowances; the regular  
12 pay day designated by the employer in accordance with section one  
13 hundred ninety-one of this article; the name of the employer; any "doing  
14 business as" names used by the employer; the physical address of the  
15 employer's main office or principal place of business, and a mailing  
16 address if different; the telephone number of the employer; plus such  
17 other information as the commissioner deems material and necessary. Each

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

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1 time the employer provides such notice to an employee, the employer  
2 shall obtain from the employee a signed and dated written acknowledge-  
3 ment, in English and in the primary language of the employee, of receipt  
4 of this notice, which the employer shall preserve and maintain for six  
5 years. Such acknowledgement shall include an affirmation by the employee  
6 that the employee accurately identified his or her primary language to  
7 the employer, and that the notice provided by the employer to such  
8 employee pursuant to this subdivision was in the language so identified  
9 or otherwise complied with paragraph (c) of this subdivision, and shall  
10 conform to any additional requirements established by the commissioner  
11 with regard to content and form. For all employees who are not exempt  
12 from overtime compensation as established in the commissioner's minimum  
13 wage orders or otherwise provided by New York state law or regulation,  
14 the notice must state the regular hourly rate and overtime rate of pay;

15 S 2. Subdivisions 1-b and 1-d of section 198 of the labor law, as  
16 added by chapter 564 of the laws of 2010, are amended to read as  
17 follows:

18 1-b. If any employee is not provided within ten business days of his  
19 or her first day of employment a notice as required by subdivision one  
20 of section one hundred ninety-five of this article, he or she may  
21 recover in a civil action damages of fifty dollars for each work [week]  
22 DAY that the violations occurred or continue to occur, but not to exceed  
23 a total of [two] FIVE thousand [five hundred] dollars, together with  
24 costs and reasonable attorney's fees. The court may also award other  
25 relief, including injunctive and declaratory relief, that the court in  
26 its discretion deems necessary or appropriate.

27 On behalf of any employee not provided a notice as required by subdi-  
28 vision one of section one hundred ninety-five of this article, the  
29 commissioner may bring any legal action necessary, including administra-  
30 tive action, to collect such claim, and as part of such legal action, in  
31 addition to any other remedies and penalties otherwise available under  
32 this article, the commissioner may assess against the employer damages  
33 of fifty dollars for each work [week] DAY that the violations occurred  
34 or continue to occur, BUT NOT TO EXCEED A TOTAL OF FIVE THOUSAND  
35 DOLLARS. In any action or administrative proceeding to recover damages  
36 for violation of paragraph [(d)] (A) of subdivision one of section one  
37 hundred ninety-five of this article, it shall be an affirmative defense  
38 that (i) the employer made complete and timely payment of all wages due  
39 pursuant to this article or article nineteen or article nineteen-A of  
40 this chapter to the employee who was not provided notice as required by  
41 subdivision one of section one hundred ninety-five of this article or  
42 (ii) the employer reasonably believed in good faith that it was not  
43 required to provide the employee with notice pursuant to subdivision one  
44 of section one hundred ninety-five of this article.

45 1-d. If any employee is not provided a statement or statements as  
46 required by subdivision three of section one hundred ninety-five of this  
47 article, he or she shall recover in a civil action damages of [one] TWO  
48 hundred FIFTY dollars for each work [week] DAY that the violations  
49 occurred or continue to occur, but not to exceed a total of [twenty-five  
50 hundred] FIVE THOUSAND dollars, together with costs and reasonable  
51 attorney's fees. The court may also award other relief, including  
52 injunctive and declaratory relief, that the court in its discretion  
53 deems necessary or appropriate.

54 On behalf of any employee not provided a statement as required by  
55 subdivision three of section one hundred ninety-five of this article,  
56 the commissioner may bring any legal action necessary, including admin-

1 istrative action, to collect such claim, and as part of such legal  
2 action, in addition to any other remedies and penalties otherwise avail-  
3 able under this article, the commissioner may assess against the employ-  
4 er damages of [one] TWO hundred FIFTY dollars for each work [week] DAY  
5 that the violations occurred or continue to occur, BUT NOT TO EXCEED A  
6 TOTAL OF FIVE THOUSAND DOLLARS. In any action or administrative proceed-  
7 ing to recover damages for violation of subdivision three of section one  
8 hundred ninety-five of this article, it shall be an affirmative defense  
9 that (i) the employer made complete and timely payment of all wages due  
10 pursuant to this article or articles nineteen or nineteen-A of this  
11 chapter to the employee who was not provided statements as required by  
12 subdivision three of section one hundred ninety-five of this article or  
13 (ii) the employer reasonably believed in good faith that it was not  
14 required to provide the employee with statements pursuant to paragraph  
15 (e) of subdivision one of section one hundred ninety-five of this arti-  
16 cle.

17 S 3. Subdivision 1 of section 218 of the labor law, as amended by  
18 chapter 564 of the laws of 2010, the opening paragraph and second undes-  
19 ignated paragraph as further amended by section 104 of part A of chapter  
20 62 of the laws of 2011, is amended and a new subdivision 5 is added to  
21 read as follows:

22 1. If the commissioner determines that an employer has violated a  
23 provision of article six (payment of wages), article nineteen (minimum  
24 wage act), article nineteen-A (minimum wage standards and protective  
25 labor practices for farm workers), section two hundred twelve-a, section  
26 two hundred twelve-b, section one hundred sixty-one (day of rest) or  
27 section one hundred sixty-two (meal periods) of this chapter, or a rule  
28 or regulation promulgated thereunder, the commissioner shall issue to  
29 the employer an order directing compliance therewith, which shall  
30 describe particularly the nature of the alleged violation. A copy of  
31 such order shall be provided to any employee who has filed a complaint  
32 and any authorized representative of him or her. In addition to direct-  
33 ing payment of wages, benefits or wage supplements found to be due, and  
34 liquidated damages in the amount of one hundred percent of unpaid wages,  
35 such order, if issued to an employer who previously has been found in  
36 violation of those provisions, rules or regulations, or to an employer  
37 whose violation is willful or egregious, shall direct payment to the  
38 commissioner of an additional sum as a civil penalty in an amount not to  
39 exceed double the total amount of wages, benefits, or wage supplements  
40 found to be due. ADDITIONALLY, SUCH ORDER, IF ISSUED TO AN EMPLOYER WHO  
41 PREVIOUSLY HAS BEEN FOUND IN VIOLATION OF THOSE PROVISIONS, RULES OR  
42 REGULATIONS, OR TO AN EMPLOYER WHOSE VIOLATION IS WILLFUL OR EGREGIOUS,  
43 SHALL DIRECT SUCH EMPLOYER TO REPORT, BY LOCATION, AND FOR SUCH PERIOD  
44 AS THE COMMISSIONER SHALL DETERMINE, (A) THE NUMBER OF PERMANENT  
45 FULL-TIME EMPLOYEES, THE NUMBER OF TEMPORARY FULL-TIME EMPLOYEES, THE  
46 NUMBER OF PERMANENT PART-TIME EMPLOYEES, THE NUMBER OF TEMPORARY  
47 PART-TIME EMPLOYEES, AND THE NUMBER OF TEMPORARY STAFFING AGENCY EMPLOY-  
48 EES PERFORMING WORK FOR THE EMPLOYER; (B) THE HOURLY RATES OF SUCH  
49 EMPLOYEES REPORTED IN THE FOLLOWING BRACKETS: THE STATE MINIMUM WAGE TO  
50 \$9.99; \$10.00 TO \$11.99; \$12.00 TO \$14.99; AND \$15.00 OR MORE; (C) THE  
51 NUMBER OF EMPLOYEES WHO REGULARLY WORKED THE FOLLOWING NUMBER OF HOURS  
52 PER WEEK DURING THE RELEVANT CALENDAR PERIOD: AT LEAST SIXTY; AT LEAST  
53 FIFTY BUT FEWER THAN SIXTY; AT LEAST FORTY, BUT FEWER THAN FIFTY; AT  
54 LEAST THIRTY-FIVE BUT FEWER THAN FORTY; AT LEAST THIRTY BUT FEWER THAN  
55 THIRTY-FIVE; AT LEAST TWENTY-FIVE BUT FEWER THAN THIRTY; AT LEAST TWENTY  
56 BUT FEWER THAN TWENTY-FIVE; AT LEAST TEN BUT FEWER THAN TWENTY; AT LEAST

1 FIVE BUT FEWER THAN TEN; FEWER THAN FIVE. NO INDIVIDUAL IDENTIFYING  
2 INFORMATION OF SUCH EMPLOYEES SHALL BE REPORTED OR OTHERWISE DISCLOSED  
3 TO THE DEPARTMENT. THE DEPARTMENT SHALL POST THE DATA COLLECTED ON THE  
4 DEPARTMENT'S WEBSITE. FOR THE PURPOSES OF THIS SECTION, TEMPORARY  
5 EMPLOYEES SHALL BE THOSE EMPLOYEES WHO ARE HIRED FOR A PERIOD OF SIXTY  
6 DAYS OR LESS DURING THE RELEVANT CALENDAR YEAR, FULL-TIME EMPLOYEES  
7 SHALL BE THOSE REGULARLY WORKING FORTY HOURS OR MORE PER WEEK DURING THE  
8 RELEVANT CALENDAR YEAR, PART-TIME EMPLOYEES SHALL BE THOSE WORKING LESS  
9 THAN FORTY HOURS PER WEEK DURING THE RELEVANT CALENDAR YEAR. In no case  
10 shall the order direct payment of an amount less than the total wages,  
11 benefits or wage supplements found by the commissioner to be due, plus  
12 the liquidated damages in the amount of one hundred percent of unpaid  
13 wages, the appropriate civil penalty, and interest at the rate of inter-  
14 est then in effect, as prescribed by the superintendent of financial  
15 services pursuant to section fourteen-a of the banking law per annum  
16 from the date of the underpayment to the date of the payment. Where the  
17 violation is for a reason other than the employer's failure to pay  
18 wages, benefits or wage supplements found to be due, the order shall  
19 direct payment to the commissioner of a civil penalty in an amount not  
20 to exceed one thousand dollars for a first violation, two thousand  
21 dollars for a second violation or three thousand dollars for a third or  
22 subsequent violation. In assessing the amount of the penalty, the  
23 commissioner shall give due consideration to the size of the employer's  
24 business, the good faith basis of the employer to believe that its  
25 conduct was in compliance with the law, the gravity of the violation,  
26 the history of previous violations and, in the case of wages, benefits  
27 or supplements violations, the failure to comply with recordkeeping or  
28 other non-wage requirements.

29 Where there is a violation of section one hundred ninety-eight-b of  
30 this chapter, the order shall direct payment back to the employee of the  
31 amount of wages, supplements or other thing of value unlawfully received  
32 plus liquidated damages in the amount of one hundred percent of unpaid  
33 wages, and interest at the rate of interest then in effect, as  
34 prescribed by the superintendent of financial services pursuant to  
35 section fourteen-a of the banking law per annum from the date of the  
36 payback, return, donation or contribution to the date of payment, and  
37 shall include such other relief as may be appropriate, including rehir-  
38 ing or reinstatement of the employee to his or her former position, back  
39 wages, and restoration of seniority. In addition, the commissioner shall  
40 order payment of a civil penalty of at least twenty-five hundred dollars  
41 but not more than five thousand dollars per violation. In assessing the  
42 amount of the penalty, the commissioner shall give due consideration to  
43 the size of the employer's business, the good faith basis of the employ-  
44 er to believe that its conduct was in compliance with the law, the grav-  
45 ity of the violation, the history of previous violations.

46 At the discretion of the commissioner, the commissioner shall have  
47 full authority to provide for inclusion of an automatic fifteen percent  
48 additional amount of damages to come due and owing upon expiration of  
49 ninety days from an order to comply becoming final. The commissioner  
50 shall provide written notice to the employer in the order to comply of  
51 this additional damage.

52 5. AN EMPLOYER SIMILAR IN OPERATION AND OWNERSHIP TO A PRIOR EMPLOYER  
53 WHICH HAD BEEN FOUND IN VIOLATION OF ARTICLE SIX, NINETEEN OR NINETEEN-A  
54 OF THIS CHAPTER, SHALL BE DEEMED THE SAME EMPLOYER FOR THE PURPOSES OF  
55 THIS SECTION IF THE EMPLOYEES OF THE NEW EMPLOYER ARE ENGAGED IN  
56 SUBSTANTIALLY THE SAME WORK IN SUBSTANTIALLY THE SAME WORKING CONDITIONS

1 UNDER SUBSTANTIALLY THE SAME SUPERVISORS, OR IF THE SUBSEQUENT EMPLOYER  
2 HAS SUBSTANTIALLY THE SAME PRODUCTION PROCESS, PRODUCES SUBSTANTIALLY  
3 THE SAME PRODUCTS AND HAS SUBSTANTIALLY THE SAME BODY OF CUSTOMERS. SUCH  
4 SUBSEQUENT EMPLOYER SHALL CONTINUE TO BE SUBJECT TO THIS SECTION AND  
5 LIABLE FOR THE ACTS OF THE PRIOR EMPLOYER UNDER THIS SECTION.

6 S 4. Section 219 of the labor law is amended by adding a new subdivi-  
7 sion 4 to read as follows:

8 4. AN EMPLOYER SIMILAR IN OPERATION AND OWNERSHIP TO A PRIOR EMPLOYER  
9 FOUND TO BE IN VIOLATION OF ARTICLE SIX, NINETEEN OR NINETEEN-A OF THIS  
10 CHAPTER, SHALL BE DEEMED THE SAME EMPLOYER FOR THE PURPOSES OF THIS  
11 SECTION IF THE EMPLOYEES OF THE SUBSEQUENT EMPLOYER ARE ENGAGED IN  
12 SUBSTANTIALLY THE SAME WORK IN SUBSTANTIALLY THE SAME WORKING CONDITIONS  
13 UNDER SUBSTANTIALLY THE SAME SUPERVISORS, OR IF THE NEW ENTITY HAS  
14 SUBSTANTIALLY THE SAME PRODUCTION PROCESS, PRODUCES SUBSTANTIALLY THE  
15 SAME PRODUCTS AND HAS SUBSTANTIALLY THE SAME BODY OF CUSTOMERS. SUCH A  
16 SUBSEQUENT EMPLOYER WILL CONTINUE TO BE SUBJECT TO THIS SECTION AND  
17 SHALL BE LIABLE FOR THE ACTS OF THE PRIOR EMPLOYER UNDER THIS SECTION.

18 S 5. Subdivision 3 of section 198 of the labor law, as amended by  
19 chapter 564 of the laws of 2010, is amended to read as follows:

20 3. Notwithstanding any other provision of law, an action to recover  
21 upon a liability imposed by this article must be commenced within six  
22 years. The statute of limitations shall be tolled from the date an  
23 employee files a complaint with the commissioner or the commissioner  
24 commences an investigation, whichever is earlier, until an order to  
25 comply issued by the commissioner becomes final, or where the commis-  
26 sioner does not issue an order, until the date on which the commissioner  
27 notifies the complainant that the investigation has concluded. Investi-  
28 gation by the commissioner shall not be a prerequisite to nor a bar  
29 against a person bringing a civil action under this section. All employ-  
30 ees shall have the right to recover full wages, benefits and wage  
31 supplements and liquidated damages accrued during the six years previous  
32 to the commencing of such action, whether such action is instituted by  
33 the employee or by the commissioner. THE COMMISSIONER'S INVESTIGATION  
34 SHALL COVER THE ENTIRE SIX-YEAR STATUTE OF LIMITATIONS PERIOD UNLESS THE  
35 COMMISSIONER OTHERWISE NOTIFIES ALL AFFECTED EMPLOYEES.

36 S 6. Paragraph (b) of subdivision 1 and paragraph (a) of subdivision 2  
37 of section 215 of the labor law, as amended by chapter 564 of the laws  
38 of 2010, are amended to read as follows:

39 (b) If after investigation the commissioner finds that an employer or  
40 person has violated any provision of this section, the commissioner may,  
41 by an order which shall describe particularly the nature of the  
42 violation, assess the employer or person a civil penalty of not less  
43 than one thousand nor more than ten thousand dollars PROVIDED, HOWEVER,  
44 THAT IF THE COMMISSIONER FINDS THAT THE EMPLOYER HAS VIOLATED THE  
45 PROVISIONS OF THIS SECTION IN THE PRECEDING SIX YEARS, HE OR SHE MAY  
46 ASSESS A CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND NOR MORE THAN TWEN-  
47 TY THOUSAND DOLLARS. The commissioner may also order all appropriate  
48 relief including enjoining the conduct of any person or employer; order-  
49 ing payment of liquidated damages to the employee by the person or enti-  
50 ty in violation; and, where the person or entity in violation is an  
51 employer ordering rehiring or reinstatement of the employee to his or  
52 her former position or an equivalent position, and an award of lost  
53 compensation or an award of front pay in lieu of reinstatement and an  
54 award of lost compensation. Liquidated damages shall be calculated as an  
55 amount not more than [ten] TWENTY thousand dollars. The commissioner may  
56 assess liquidated damages on behalf of every employee aggrieved under

1 this section, in addition to any other remedies permitted by this  
2 section.

3 (a) An employee may bring a civil action in a court of competent  
4 jurisdiction against any employer or persons alleged to have violated  
5 the provisions of this section. The court shall have jurisdiction to  
6 restrain violations of this section, within two years after such  
7 violation, regardless of the dates of employment of the employee, and to  
8 order all appropriate relief, including enjoining the conduct of any  
9 person or employer; ordering payment of liquidated damages, costs and  
10 reasonable attorneys' fees to the employee by the person or entity in  
11 violation; and, where the person or entity in violation is an employer,  
12 ordering rehiring or reinstatement of the employee to his or her former  
13 position with restoration of seniority or an award of front pay in lieu  
14 of reinstatement, and an award of lost compensation and damages, costs  
15 and reasonable attorneys' fees. Liquidated damages shall be calculated  
16 as an amount not more than [ten] TWENTY thousand dollars. The court  
17 shall award liquidated damages to every employee aggrieved under this  
18 section, in addition to any other remedies permitted by this section.  
19 The statute of limitations shall be tolled from the date an employee  
20 files a complaint with the commissioner or the commissioner commences an  
21 investigation, whichever is earlier, until an order to comply issued by  
22 the commissioner becomes final, or where the commissioner does not issue  
23 an order, until the date on which the commissioner notifies the  
24 complainant that the investigation has concluded. Investigation by the  
25 commissioner shall not be a prerequisite to nor a bar against a person  
26 bringing a civil action under this section.

27 S 7. Subdivision 3 of section 218 of the labor law, as amended by  
28 chapter 564 of the laws of 2010, is amended to read as follows:

29 3. Provided that no proceeding for administrative or judicial review  
30 as provided in this chapter shall then be pending and the time for  
31 initiation of such proceeding shall have expired, the commissioner may  
32 file with the county clerk of the county where the employer resides or  
33 has a place of business the order of the commissioner, or the decision  
34 of the industrial board of appeals containing the amount found to be due  
35 including the civil penalty, if any, and at the commissioner's  
36 discretion, an additional fifteen percent damages upon any outstanding  
37 monies owed. At the request of an employee, [and at the discretion of  
38 the commissioner,] the commissioner [may] SHALL assign that portion of  
39 the money due that constitutes wages, wage supplements, interest on  
40 wages or wage supplements, or liquidated damages due that employee, to  
41 that employee and file an order in that amount in the name of that  
42 employee with the county clerk of the county where the employer resides  
43 or has a place of business. The filing of such order or decision shall  
44 have the full force and effect of a judgment duly docketed in the office  
45 of such clerk. The order or decision may be enforced by and in the name  
46 of the commissioner, OR BY THE EMPLOYEE, in the same manner, and with  
47 like effect, as that prescribed by the civil practice law and rules for  
48 the enforcement of a money judgment.

49 S 8. Subdivision 3 of section 219 of the labor law, as amended by  
50 chapter 564 of the laws of 2010, is amended to read as follows:

51 3. Provided that no proceeding for administrative or judicial review  
52 as provided in this chapter shall then be pending and the time for  
53 initiation of such proceeding shall have expired, the commissioner may  
54 file with the county clerk of the county where the employer resides or  
55 has a place of business the order of the commissioner or the decision of  
56 the industrial board of appeals containing the amount found to be due,

1 including, at the commissioner's discretion, an additional fifteen  
2 percent damages upon any outstanding monies owed. At the request of an  
3 employee, [and at the discretion of the commissioner,] the commissioner  
4 [may] SHALL assign that portion of the money due that constitutes wages,  
5 wage supplements, interest on wages or wage supplements, or liquidated  
6 damages due the employee, to that employee and file an order in that  
7 amount in the name of such employee with the county clerk of the county  
8 where the employer resides or has a place of business. The filing of  
9 such order or decision shall have the full force and effect of a judg-  
10 ment duly docketed in the office of such clerk. The order or decision  
11 may be enforced by and in the name of the commissioner, OR BY THE  
12 EMPLOYEE, in the same manner, and with like effect, as that prescribed  
13 by the civil practice law and rules for the enforcement of a money judg-  
14 ment.

15 S 9. Subdivision 3 of section 663 of the labor law, as amended by  
16 chapter 564 of the laws of 2010, is amended to read as follows:

17 3. Limitation of time. Notwithstanding any other provision of law, an  
18 action to recover upon a liability imposed by this article must be  
19 commenced within six years. The statute of limitations shall be tolled  
20 from the date an employee files a complaint with the commissioner or the  
21 commissioner commences an investigation, whichever is earlier, until an  
22 order to comply issued by the commissioner becomes final, or where the  
23 commissioner does not issue an order, until the date on which the  
24 commissioner notifies the complainant that the investigation has  
25 concluded. THE COMMISSIONER'S INVESTIGATION SHALL COVER THE ENTIRE SIX-  
26 YEAR STATUTE OF LIMITATIONS PERIOD UNLESS THE COMMISSIONER OTHERWISE  
27 NOTIFIES ALL AFFECTED EMPLOYEES. Investigation by the commissioner  
28 shall not be a prerequisite to nor a bar against a person bringing a  
29 civil action under this article.

30 S 10. The labor law is amended by adding a new section 861-g to read  
31 as follows:

32 S 861-G. CONTRACTOR ACCOUNTABILITY. WHEN A CONTRACTOR OR SUB-CONTRAC-  
33 TOR IS FOUND TO HAVE FAILED TO PAY ALL WAGES AS REQUIRED BY ARTICLE SIX  
34 OR NINETEEN OF THIS CHAPTER, EITHER BY A FINAL ORDER ISSUED BY THE  
35 COMMISSIONER, AN ASSURANCE OF DISCONTINUANCE OR FINAL SETTLEMENT WITH  
36 THE OFFICE OF THE ATTORNEY GENERAL, OR A FINAL JUDGMENT OR ORDER OF A  
37 COURT OF COMPETENT JURISDICTION, THE CONTRACTOR OR SUB-CONTRACTOR SHALL  
38 NOTIFY ALL OF ITS EMPLOYEES OF THE NATURE OF THESE VIOLATIONS. NOTIFI-  
39 CATION SUMMARIZING THE FINDINGS SHALL BE MADE VIA PAYCHECK ATTACHMENT TO  
40 EMPLOYEES AT ALL WORKSITES ACCORDING TO SUCH FORM AND MANNER ORDERED BY  
41 THE COMMISSIONER. THE COMMISSIONER SHALL HAVE THE AUTHORITY TO PROMUL-  
42 GATE RULES NECESSARY TO EFFECTUATE THE TERMS OF THIS SECTION.

43 S 11. Section 609 of the limited liability company law is amended by  
44 adding two new subdivisions (c) and (d) to read as follows:

45 (C) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISIONS (A) AND (B) OF THIS  
46 SECTION, THE TEN MEMBERS WITH THE LARGEST PERCENTAGE OWNERSHIP INTEREST,  
47 AS DETERMINED AS OF THE BEGINNING OF THE PERIOD DURING WHICH THE UNPAID  
48 SERVICES REFERRED TO IN THIS SECTION ARE PERFORMED, OF EVERY LIMITED  
49 LIABILITY COMPANY, SHALL JOINTLY AND SEVERALLY BE PERSONALLY LIABLE FOR  
50 ALL DEBTS, WAGES OR SALARIES DUE AND OWING TO ANY OF ITS LABORERS, SERV-  
51 ANTS OR EMPLOYEES, FOR SERVICES PERFORMED BY THEM FOR SUCH LIMITED  
52 LIABILITY COMPANY. BEFORE SUCH LABORER, SERVANT OR EMPLOYEE SHALL CHARGE  
53 SUCH MEMBER FOR SUCH SERVICES, HE OR SHE SHALL GIVE NOTICE IN WRITING TO  
54 SUCH MEMBER THAT HE OR SHE INTENDS TO HOLD SUCH MEMBER LIABLE UNDER THIS  
55 SECTION. SUCH NOTICE SHALL BE GIVEN WITHIN ONE HUNDRED EIGHTY DAYS AFTER  
56 TERMINATION OF SUCH SERVICES. AN ACTION TO ENFORCE SUCH LIABILITY SHALL

1 BE COMMENCED WITHIN NINETY DAYS AFTER THE RETURN OF AN EXECUTION UNSAT-  
2 ISFIED AGAINST THE LIMITED LIABILITY COMPANY UPON A JUDGMENT RECOVERED  
3 AGAINST IT FOR SUCH SERVICES. A MEMBER WHO HAS PAID MORE THAN HIS OR HER  
4 PRO RATA SHARE UNDER THIS SECTION SHALL BE ENTITLED TO CONTRIBUTION PRO  
5 RATA FROM THE OTHER MEMBERS LIABLE UNDER THIS SECTION WITH RESPECT TO  
6 THE EXCESS SO PAID, OVER AND ABOVE HIS OR HER PRO RATA SHARE, AND MAY  
7 SUE THEM JOINTLY OR SEVERALLY OR ANY NUMBER OF THEM TO RECOVER THE  
8 AMOUNT DUE FROM THEM. SUCH RECOVERY MAY BE HAD IN A SEPARATE ACTION. AS  
9 USED IN THIS SUBDIVISION, "PRO RATA" MEANS IN PROPORTION TO PERCENTAGE  
10 OWNERSHIP INTEREST. BEFORE A MEMBER MAY CLAIM CONTRIBUTION FROM OTHER  
11 MEMBERS UNDER THIS SECTION, HE OR SHE SHALL GIVE THEM NOTICE IN WRITING  
12 THAT HE OR SHE INTENDS TO HOLD THEM SO LIABLE TO HIM OR HER.

13 (D) FOR THE PURPOSES OF THIS SECTION, WAGES OR SALARIES SHALL MEAN ALL  
14 COMPENSATION AND BENEFITS PAYABLE BY AN EMPLOYER TO OR FOR THE ACCOUNT  
15 OF THE EMPLOYEE, SERVANT OR LABORER, FOR SERVICES PERFORMED BY THEM FOR  
16 SUCH LIMITED LIABILITY COMPANY. THESE SHALL SPECIFICALLY INCLUDE BUT NOT  
17 BE LIMITED TO SALARIES, OVERTIME, VACATION, HOLIDAY AND SEVERANCE PAY;  
18 EMPLOYER CONTRIBUTIONS TO OR PAYMENTS OF INSURANCE OR WELFARE BENEFITS;  
19 EMPLOYER CONTRIBUTIONS TO PENSION OR ANNUITY FUNDS; AND ANY OTHER MONEYS  
20 PROPERLY DUE OR PAYABLE FOR SERVICES RENDERED BY SUCH EMPLOYEE, SERVANT  
21 OR LABORER, INCLUDING ANY CONCOMITANT LIQUIDATED DAMAGES, PENALTIES,  
22 INTEREST, ATTORNEYS' FEES OR COSTS.

23 S 12. The state finance law is amended by adding a new section 97-pppp  
24 to read as follows:

25 S 97-PPPP. WAGE THEFT PREVENTION ENFORCEMENT ACCOUNT. 1. THERE IS  
26 HEREBY ESTABLISHED IN THE CUSTODY OF THE STATE COMPTROLLER THE WAGE  
27 THEFT PREVENTION ENFORCEMENT ACCOUNT.

28 2. SUCH FUND SHALL CONSIST OF MONEYS COLLECTED PURSUANT TO THE  
29 PROVISIONS OF ARTICLES FIVE, SIX, NINETEEN AND NINETEEN-A OF THE LABOR  
30 LAW, AND SECTIONS TWO HUNDRED FIFTEEN AND TWO HUNDRED EIGHTEEN OF THE  
31 LABOR LAW, AND THE REGULATIONS PROMULGATED THEREUNDER.

32 3. MONEYS OF THE FUND SHALL BE AVAILABLE TO THE COMMISSIONER OF LABOR  
33 FOR PURPOSES OF OFFSETTING THE COSTS INCURRED BY THE COMMISSIONER OF  
34 LABOR FOR THE ADMINISTRATION AND ENFORCEMENT OF ARTICLES FIVE, SIX,  
35 NINETEEN AND NINETEEN-A OF THE LABOR LAW, AND SECTIONS TWO HUNDRED  
36 FIFTEEN AND TWO HUNDRED EIGHTEEN OF THE LABOR LAW, AND THE REGULATIONS  
37 PROMULGATED THEREUNDER.

38 4. THE MONEYS SHALL BE PAID OUT OF THE FUND ON THE AUDIT AND WARRANT  
39 OF THE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER  
40 OF LABOR OR HIS OR HER DESIGNEE.

41 5. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL OR SPECIAL LAW, NO  
42 MONEYS SHALL BE AVAILABLE FROM THE FUND UNTIL A CERTIFICATE OF ALLO-  
43 CATION AND A SCHEDULE OF AMOUNTS TO BE AVAILABLE THEREFOR SHALL HAVE  
44 BEEN ISSUED BY THE DIRECTOR OF THE BUDGET, AND A COPY OF SUCH CERTIF-  
45 ICATE FILED WITH THE COMPTROLLER. SUCH CERTIFICATE MAY BE AMENDED FROM  
46 TIME TO TIME BY THE DIRECTOR OF THE BUDGET AND A COPY OF EACH SUCH  
47 AMENDMENT SHALL BE FILED WITH THE COMPTROLLER.

48 S 13. This act shall take effect on the sixtieth day after it shall  
49 have become a law.