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

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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:

Section 1. Paragraph (a) of subdivision 1 of section 195 of the labor law, as amended by chapter 564 of the laws of 2010, is amended to read as follows:

(a) provide his or her employees, in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring[, and on or before February first of each subsequent year of the employee's employment with the employer], a notice containing the following information: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such 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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time the employer provides such notice to an employee, the employer shall obtain from the employee a signed and dated written acknowledgement, in English and in the primary language of the employee, of receipt of this notice, which the employer shall preserve and maintain for six years. Such acknowledgement shall include an affirmation by the employee that the employee accurately identified his or her primary language to the employer, and that the notice provided by the employer to such employee pursuant to this subdivision was in the language so identified or otherwise complied with paragraph (c) of this subdivision, and shall conform to any additional requirements established by the commissioner with regard to content and form. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the notice must state the regular hourly rate and overtime rate of pay;

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

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

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

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

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

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

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

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

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

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

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

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

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

S 4. Section 219 of the labor law is amended by adding a new subdivision 4 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 861-G. CONTRACTOR ACCOUNTABILITY. WHEN A CONTRACTOR OR SUB-CONTRACTOR IS FOUND TO HAVE FAILED TO PAY ALL WAGES AS REQUIRED BY ARTICLE SIX OR NINETEEN OF THIS CHAPTER, EITHER BY A FINAL ORDER ISSUED BY THE COMMISSIONER, AN ASSURANCE OF DISCONTINUANCE OR FINAL SETTLEMENT WITH THE OFFICE OF THE ATTORNEY GENERAL, OR A FINAL JUDGMENT OR ORDER OF A COURT OF COMPETENT JURISDICTION, THE CONTRACTOR OR SUB-CONTRACTOR SHALL NOTIFY ALL OF ITS EMPLOYEES OF THE NATURE OF THESE VIOLATIONS. NOTIFICATION SUMMARIZING THE FINDINGS SHALL BE MADE VIA PAYCHECK ATTACHMENT TO EMPLOYEES AT ALL WORKSITES ACCORDING TO SUCH FORM AND MANNER ORDERED BY THE COMMISSIONER. THE COMMISSIONER SHALL HAVE THE AUTHORITY TO PROMULGATE RULES NECESSARY TO EFFECTUATE THE TERMS OF THIS SECTION.

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

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

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

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

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

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

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

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

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

5. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL OR SPECIAL LAW, NO MONEYS SHALL BE AVAILABLE FROM THE FUND UNTIL A CERTIFICATE OF ALLOCATION AND A SCHEDULE OF AMOUNTS TO BE AVAILABLE THEREFOR SHALL HAVE BEEN ISSUED BY THE DIRECTOR OF THE BUDGET, AND A COPY OF SUCH CERTIFICATE FILED WITH THE COMPTROLLER. SUCH CERTIFICATE MAY BE AMENDED FROM TIME TO TIME BY THE DIRECTOR OF THE BUDGET AND A COPY OF EACH SUCH AMENDMENT SHALL BE FILED WITH THE COMPTROLLER.

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