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I N   S E N A T E

January 15, 2014

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

AN ACT to amend the labor law, in relation to making technical corrections to the "New York state commercial goods transportation industry fair play act"; and to amend chapter 558 of the laws of 2013 amending the labor law relating to enacting the "New York state commercial goods transportation industry fair play act", in relation to the effectiveness thereof

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

- 1     Section 1. Sections 862-a, 862-b and 862-c of the labor law, as added  
2     by chapter 558 of the laws of 2013, are amended to read as follows:  
3     S 862-a. Definitions. As used in this article:  
4     1. "Commercial goods transportation contractor" means any sole propri-  
5     etor, partnership, firm, corporation, limited liability company, associ-  
6     ation or other legal entity [permitted by law to do business within the  
7     state who] THAT compensates [commercial vehicle drivers] A DRIVER who  
8     possesses a state-issued [commercial] driver's license [to transport],  
9     TRANSPORTS goods in the state of New York AND OPERATES A COMMERCIAL  
10    MOTOR VEHICLE AS DEFINED IN SUBDIVISION FOUR-A OF SECTION TWO OF THE  
11    TRANSPORTATION LAW.  
12    2. "Commercial goods transportation contractor" includes a general  
13    commercial goods transportation contractor or a commercial goods trans-  
14    portation subcontractor.  
15    3. "Commercial goods transportation services" means the transportation  
16    of goods for compensation by a [commercial vehicle] driver who possesses  
17    a state-issued [commercial] driver's license [and], transports goods in  
18    the state of New York, AND OPERATES A COMMERCIAL MOTOR VEHICLE AS  
19    DEFINED IN SUBDIVISION FOUR-A OF SECTION TWO OF THE TRANSPORTATION LAW.  
20    4. "Department" means the department of labor.  
21    5. "Commissioner" means the commissioner of labor.  
22    6. "Employer" means any commercial goods transportation contractor  
23    which compensates [commercial vehicle drivers who possess a state-issued  
24    commercial driver's license to transport goods in the state of New York]

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

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1 A PERSON CLASSIFIED AS AN EMPLOYEE UNDER SECTION EIGHT HUNDRED  
2 SIXTY-TWO-B OF THIS ARTICLE.

3 S 862-b. Presumption of employment in the commercial goods transporta-  
4 tion industry. 1. Any person performing commercial goods transportation  
5 services for a commercial goods transportation contractor shall be clas-  
6 sified as an employee OF THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR  
7 unless PAYMENT FOR SUCH SERVICES IS REPORTED ON A FEDERAL INCOME TAX  
8 FORM 1099 IF REQUIRED BY LAW AND EITHER the person is a separate busi-  
9 ness entity under subdivision two of this section or all of the follow-  
10 ing criteria are met, in which case the person shall be an independent  
11 contractor:

12 (a) the individual is free from control and direction in performing  
13 the job, both under his or her contract and in fact;

14 (b) the service must be performed outside the usual course of business  
15 for which the service is performed; and

16 (c) the individual is customarily engaged in an independently estab-  
17 lished trade, occupation, profession, or business that is similar to the  
18 service at issue.

19 2. A business entity, including any sole proprietor, partnership,  
20 FIRM, corporation, LIMITED LIABILITY COMPANY, ASSOCIATION or OTHER LEGAL  
21 entity that may ALSO be a commercial goods transportation contractor  
22 under this section shall be considered a separate business entity from  
23 the commercial goods transportation contractor where all the following  
24 criteria are met:

25 (a) the business entity is performing the service free from the direc-  
26 tion or control over the means and manner of providing the service,  
27 subject only to the right of the commercial goods transportation  
28 contractor for whom the service is provided to specify the desired  
29 result or federal rule or regulation;

30 (b) the business entity is not subject to cancellation or destruction  
31 upon severance of the relationship with the commercial goods transporta-  
32 tion contractor;

33 (c) the business entity has a substantial investment of capital in the  
34 business entity, including but not limited to ordinary tools and equip-  
35 ment;

36 (d) the business entity owns or leases the capital goods and gains the  
37 profits and bears the losses of the business entity;

38 (e) the business entity [has an option to] MAY make its services  
39 available to the general public or OTHERS NOT A PARTY TO THE BUSINESS  
40 ENTITY'S WRITTEN CONTRACT REFERENCED IN PARAGRAPH (G) OF THIS SUBDIVI-  
41 SION IN the business community on a continuing basis;

42 (f) the business entity [includes] PROVIDES services [rendered]  
43 REPORTED on a Federal Income Tax [Schedule as an independent business or  
44 profession] FORM 1099, IF REQUIRED BY LAW;

45 (g) the business entity performs services for the commercial goods  
46 transportation contractor pursuant to a written contract, under the  
47 business entity's name, specifying their relationship to be as independ-  
48 ent contractors or separate business entities;

49 (h) when the services being provided require a license or permit, the  
50 business entity pays for the license or permit in the business entity's  
51 name or, where permitted by law, pays for reasonable use of the commer-  
52 cial goods transportation contractor's license or permit;

53 (i) if necessary, the business entity hires its own employees WITHOUT  
54 THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR'S APPROVAL, subject to  
55 applicable qualification requirements or federal or state laws, rules or  
56 regulations, AND pays the employees without reimbursement from the

1 commercial [good] GOODS transportation contractor [and reports the  
2 employees' income to the Internal Revenue Service];

3 (j) the commercial goods transportation contractor does not require  
4 that the business entity be represented as an employee of the commercial  
5 goods transportation contractor to its customers; and

6 (k) the business entity has the right to perform similar services for  
7 others on whatever basis and whenever it chooses.

8 3. The failure to withhold federal or state income taxes or to pay  
9 unemployment compensation contributions or workers' compensation premi-  
10 ums with respect to an individual's wages shall not be considered in  
11 making a determination under this section, except as set forth in para-  
12 graph (f) of subdivision two of this section.

13 4. An individual's act of securing workers' compensation insurance  
14 with a carrier as a sole proprietor, partnership or otherwise shall not  
15 be binding on any determination under this section.

16 5. When a business entity meets the definition of a separate business  
17 entity pursuant to subdivision two of this section, the separate busi-  
18 ness entity will be considered a commercial goods transportation  
19 contractor subject to all the provisions of this article in regard to  
20 the classification of individuals performing services for it.

21 S 862-c. Notice to persons receiving remuneration from commercial  
22 goods transportation contractors and commercial goods transportation  
23 subcontractors. 1. Every commercial goods transportation contractor  
24 shall post in a prominent and accessible place on the site where commer-  
25 cial goods transportation activity is conducted a legible statement,  
26 provided by the commissioner, that describes the responsibility of inde-  
27 pendent contractors to pay taxes required by state and federal law, the  
28 rights of employees to workers' compensation, unemployment benefits,  
29 minimum wage, overtime and other federal and state workplace  
30 protections, and the protections against retaliation and the penalties  
31 in this article if the contractor fails to properly classify an individ-  
32 ual as an employee. This notice shall also contain contact information  
33 for individuals to file complaints or inquire with the commissioner  
34 about employment classification status. This information shall be  
35 provided in English, Spanish or other languages required by the commis-  
36 sioner. [The posted statement shall be constructed of materials capable  
37 of withstanding adverse weather conditions.]

38 2. Within thirty days of the effective date of this article, the  
39 commissioner shall create the notice described in subdivision one of  
40 this section and post the notice on the department's website for down-  
41 loading by commercial goods transportation contractors.

42 3. Commercial goods transportation contractors who violate this  
43 section shall be subject to a civil penalty of up to one thousand five  
44 hundred dollars for a first violation, and up to five thousand dollars  
45 for a subsequent violation within a five year period.

46 S 2. Section 5 of chapter 558 of the laws of 2013 amending the labor  
47 law relating to enacting the "New York state commercial goods transpor-  
48 tation industry fair play act", is amended to read as follows:

49 S 5. This act shall take effect on the [sixtieth] NINETIETH day after  
50 it shall have become a law.

51 S 3. This act shall take effect immediately and shall be deemed to  
52 have been in full force and effect on the same date as chapter 558 of  
53 the laws of 2013 took effect.