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

6336--A

Cal. No. 58

I N S E N A T E

January 15, 2014

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged and said bill committed to the Committee on Labor -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

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:

Section 1. Sections 862-a, 862-b and 862-c of the labor law, as added by chapter 558 of the laws of 2013, are amended to read as follows:

S 862-a. Definitions. As used in this article:

1. "Commercial goods transportation contractor" means any sole proprietor, partnership, firm, corporation, limited liability company, association or other legal entity [permitted by law to do business within the state who] THAT compensates [commercial vehicle drivers] A DRIVER who possesses a state-issued [commercial] driver's license [to transport], TRANSPORTS goods in the state of New York AND OPERATES A COMMERCIAL MOTOR VEHICLE AS DEFINED IN SUBDIVISION FOUR-A OF SECTION TWO OF THE TRANSPORTATION LAW.

2. "Commercial goods transportation contractor" includes a general commercial goods transportation contractor or a commercial goods transportation subcontractor.

3. "Commercial goods transportation services" means the transportation of goods for compensation by a [commercial vehicle] driver who possesses a state-issued [commercial] driver's license [and], transports goods in the state of New York, AND OPERATES A COMMERCIAL MOTOR VEHICLE AS DEFINED IN SUBDIVISION FOUR-A OF SECTION TWO OF THE TRANSPORTATION LAW.

4. "Department" means the department of labor.

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

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5. "Commissioner" means the commissioner of labor.

6. "Employer" means any commercial goods transportation contractor which compensates [commercial vehicle drivers who possess a state-issued commercial driver's license to transport goods in the state of New York] A PERSON CLASSIFIED AS AN EMPLOYEE UNDER SECTION EIGHT HUNDRED SIXTY-TWO-B OF THIS ARTICLE.

S 862-b. Presumption of employment in the commercial goods transportation industry. 1. Any person performing commercial goods transportation services for a commercial goods transportation contractor shall be classified as an employee OF THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR unless PAYMENT FOR SUCH SERVICES IS REPORTED ON A FEDERAL INCOME TAX FORM 1099 IF REQUIRED BY LAW AND EITHER the person is a separate business entity under subdivision two of this section or all of the following criteria are met, in which case the person shall be an independent contractor:

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

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

(c) the individual is customarily engaged in an independently established trade, occupation, profession, or business that is similar to the service at issue.

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

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

(b) the business entity is not subject to cancellation or destruction upon severance of the relationship with the commercial goods transportation contractor;

(c) the business entity has a substantial investment of capital in the business entity, including but not limited to ordinary tools and equipment;

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

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

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

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

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

(i) if necessary, the business entity hires its own employees WITHOUT THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR'S APPROVAL, subject to applicable qualification requirements or federal or state laws, rules or regulations, AND pays the employees without reimbursement from the commercial [good] GOODS transportation contractor [and reports the employees' income to the Internal Revenue Service];

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

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

3. The failure to withhold federal or state income taxes or to pay unemployment compensation contributions or workers' compensation premiums with respect to an individual's wages shall not be considered in making a determination under this section, except as set forth in paragraph (f) of subdivision two of this section.

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

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

S 862-c. Notice to persons receiving remuneration from commercial goods transportation contractors and commercial goods transportation subcontractors. 1. Every commercial goods transportation contractor shall post in a prominent and accessible place on the site where commercial goods transportation activity is conducted a legible statement, provided by the commissioner, that describes the responsibility of independent contractors to pay taxes required by state and federal law, the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime and other federal and state workplace protections, and the protections against retaliation and the penalties in this article if the contractor fails to properly classify an individual as an employee. This notice shall also contain contact information for individuals to file complaints or inquire with the commissioner about employment classification status. This information shall be provided in English, Spanish or other languages required by the commissioner. [The posted statement shall be constructed of materials capable of withstanding adverse weather conditions.]

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

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

S 2. Section 5 of 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" is amended to read as follows:

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

S 3. This act shall take effect immediately; provided, that sections one and two of this act shall take effect on the same date and in the same manner as chapter 558 of the laws of 2013, takes effect.