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I N S E N A T E

January 24, 2014

Introduced by Sen. SQUADRON -- 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 establishing a living wage rate

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 a new article 19-D to
2 read as follows:

3 ARTICLE 19-D
4 FAIR WAGES ACT

5 SECTION 696. DEFINITIONS.

6 696-A. LIVING WAGE RATE.

7 696-B. PAYMENT OF LIVING WAGE.

8 696-C. IMPLEMENTATION.

9 696-D. COMMISSIONER'S POWERS OF INVESTIGATION.

10 696-E. CIVIL ACTION.

11 S 696. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE TERM:

12 1. "EMPLOYER" MEANS A FORMULA RETAIL STORE, LARGE EMPLOYER, TRANSPORTATION BUSINESS, OR FRANCHISEE OR SUBCONTRACTOR, AND INCLUDES ANY INDIVIDUAL, PARTNERSHIP, ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY, BUSINESS TRUST, LEGAL REPRESENTATIVE, OR ANY ORGANIZED GROUP OF PERSONS ACTING AS EMPLOYER.

17 2. "FORMULA RETAIL STORE" MEANS ANY EMPLOYER THAT OPERATES A RETAIL SALES OR RESTAURANT ESTABLISHMENT EITHER DIRECTLY OR THROUGH FRANCHISEES AND THAT, ALONG WITH ELEVEN OR MORE OTHER RETAIL SALES OR RESTAURANT ESTABLISHMENTS LOCATED IN THE UNITED STATES, MAINTAINS TWO OR MORE OF THE FOLLOWING FEATURES: (A) A STANDARDIZED ARRAY OF MERCHANDISE, A STANDARDIZED FACADE, A STANDARDIZED DECOR AND COLOR SCHEME, A UNIFORM APPAREL, STANDARDIZED SIGNAGE, A TRADEMARK; OR (B) A SERVICEMARK.

24 3. "LARGE EMPLOYER" MEANS ANY EMPLOYER THAT HAS ANNUAL GROSS REVENUE OF FIFTY MILLION DOLLARS OR MORE, BUT SHALL NOT INCLUDE (A) AN EMPLOYER WHOSE PRINCIPAL INDUSTRY IS MANUFACTURING; OR (B) A NOT-FOR-PROFIT ORGANIZATION. AN EMPLOYER SHALL BE DEEMED TO HAVE ANNUAL GROSS REVENUE

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

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1 OF FIFTY MILLION DOLLARS OR MORE IF IT HAD REVENUE AT OR EXCEEDING THAT
2 LEVEL IN ANY OF THE PAST THREE FISCAL OR CALENDAR YEARS.

3 4. "MANUFACTURING" MEANS THE PROCESS OF WORKING RAW MATERIALS INTO
4 PRODUCTS SUITABLE FOR USE OR WHICH GIVES NEW SHAPES, NEW QUALITY OR NEW
5 COMBINATIONS TO MATTER WHICH HAS ALREADY GONE THROUGH SOME ARTIFICIAL
6 PROCESS BY THE USE OF MACHINERY, TOOLS, APPLIANCES, OR OTHER SIMILAR
7 EQUIPMENT.

8 5. "NOT-FOR-PROFIT ORGANIZATION" MEANS AN ENTITY EXEMPT FROM TAXATION
9 UNDER SECTION 501(C)(3) OF THE FEDERAL INTERNAL REVENUE CODE.

10 6. "TRANSPORTATION BUSINESS" MEANS ANY INDUSTRY, BUSINESS, OR ESTAB-
11 LISHMENT OPERATED FOR THE PURPOSE OF CONVEYING PERSONS OR PROPERTY FROM
12 ONE PLACE TO ANOTHER WHETHER BY RAIL, HIGHWAY, AIR, OR WATER, AND ALL
13 OPERATIONS AND SERVICES IN CONNECTION THEREWITH.

14 7. "FRANCHISEE OR SUBCONTRACTOR" MEANS ANY EMPLOYER THAT OPERATES
15 UNDER A FRANCHISE AGREEMENT WITH A FORMULA RETAIL STORE OR LARGE EMPLOY-
16 ER, OR THAT PROVIDES SERVICES, INCLUDING BUT NOT LIMITED TO JANITORIAL,
17 MAINTENANCE, SECURITY, STAFFING, PASSENGER SERVICES, FOOD SERVICES, OR
18 TEMPORARY SERVICES TO A FORMULA RETAIL STORE, LARGE EMPLOYER, OR TRANS-
19 PORTATION BUSINESS.

20 8. "EMPLOYEE" HAS THE MEANING PROVIDED IN SUBDIVISION FIVE OF SECTION
21 SIX HUNDRED FIFTY-ONE OF THIS CHAPTER.

22 9. "LIVING WAGE RATE" SHALL HAVE THE MEANING SET FORTH IN SECTION SIX
23 HUNDRED NINETY-SIX-A OF THIS TITLE.

24 S 696-A. LIVING WAGE RATE. 1. BEGINNING ON THE EFFECTIVE DATE OF THIS
25 ARTICLE, THE LIVING WAGE RATE SHALL BE AN HOURLY RATE OF FIFTEEN
26 DOLLARS.

27 2. NO LATER THAN JANUARY FIRST OF EACH SUCCESSIVE YEAR, THE COMMIS-
28 SIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED LIVING WAGE RATE BY
29 INCREASING THE THEN CURRENT LIVING WAGE RATE BY THE RATE OF INFLATION
30 FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH JANUARY
31 FIRST USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U, OR A
32 SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR,
33 IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, OR, IF GREATER,
34 SUCH OTHER WAGE AS MAY BE ESTABLISHED BY FEDERAL LAW PURSUANT TO 29
35 U.S.C. SECTION 206 OR ITS SUCCESSORS OR SUCH OTHER WAGE AS MAY BE ESTAB-
36 LISHED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

37 S 696-B. PAYMENT OF LIVING WAGE. 1. AN EMPLOYER SHALL PAY EMPLOYEES AN
38 HOURLY WAGE OF NO LESS THAN THE LIVING WAGE RATE FOR EACH HOUR THAT THE
39 EMPLOYEE WORKS WITHIN THE GEOGRAPHIC BOUNDARIES OF THE STATE.

40 2. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION, EMPLOYERS SHALL
41 PAY EMPLOYEES WHO CUSTOMARILY AND REGULARLY RECEIVE TIPS NO LESS THAN
42 SEVENTY PERCENT OF THE LIVING WAGE RATE, ROUNDED TO THE NEAREST FIVE
43 CENTS, PROVIDED THAT AT ALL TIMES THE COMBINATION OF THE CASH WAGE PAID
44 BY THE EMPLOYER AND THE TIPS RECEIVED BY THE EMPLOYEE TOTALS NO LESS
45 THAN THE LIVING WAGE RATE FOR EACH HOUR WORKED WITHIN THE GEOGRAPHIC
46 BOUNDARIES OF THE STATE. SUCH CALCULATION MAY BE MADE BASED ON THE
47 TOTAL WAGES AND TIPS RECEIVED BY THE EMPLOYEE OVER THE COURSE OF HIS OR
48 HER SHIFT.

49 3. FORMULA RETAIL STORES, LARGE EMPLOYERS, AND TRANSPORTATION BUSI-
50 NESSES SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE FOR ANY VIOLATION OF
51 THIS ARTICLE BY A FRANCHISEE OR SUBCONTRACTOR OF THE FORMULA RETAIL
52 STORE, LARGE EMPLOYER OR TRANSPORTATION BUSINESS.

53 4. THE PROVISIONS OF THIS SECTION MAY BE WAIVED BY THE WRITTEN TERMS
54 OF A BONA FIDE COLLECTIVE BARGAINING AGREEMENT.

55 S 696-C. IMPLEMENTATION. 1. BY DECEMBER FIRST OF EACH YEAR, THE STATE
56 SHALL PUBLISH AND MAKE AVAILABLE TO EMPLOYERS A BULLETIN ANNOUNCING THE

1 ADJUSTED LIVING WAGE AND BENEFITS RATE FOR THE UPCOMING YEAR, WHICH
2 SHALL TAKE EFFECT ON JANUARY FIRST.

3 2. BY DECEMBER FIRST OF EACH YEAR, THE STATE SHALL PUBLISH AND MAKE
4 AVAILABLE TO EMPLOYERS, IN ENGLISH AND SPANISH, AND ON-LINE, A NOTICE
5 SUITABLE FOR POSTING IN THE WORKPLACE INFORMING EMPLOYEES OF THE CURRENT
6 LIVING WAGE AND OF THEIR RIGHTS UNDER THIS ARTICLE.

7 3. EVERY EMPLOYER SHALL POST IN A CONSPICUOUS PLACE AT ANY WORKPLACE
8 OR JOB SITE WHERE AN EMPLOYEE WORKS THE NOTICE PUBLISHED EACH YEAR BY
9 THE AGENCY INFORMING EMPLOYEES OF THE CURRENT LIVING WAGE AND OF THEIR
10 RIGHTS UNDER THIS ARTICLE. EVERY LARGE EMPLOYER SHALL POST SUCH NOTICES
11 IN ENGLISH AND SPANISH.

12 4. EMPLOYERS SHALL RETAIN PAYROLL RECORDS PERTAINING TO EMPLOYEES FOR
13 A PERIOD OF FOUR YEARS. EMPLOYERS SHALL PERMIT AN EMPLOYEE OR AN
14 EMPLOYEE'S DESIGNATED REPRESENTATIVE TO INSPECT THE EMPLOYER'S PAYROLL
15 PERTAINING TO THE EMPLOYEE.

16 S 696-D. COMMISSIONER'S POWERS OF INVESTIGATION. THE COMMISSIONER OR
17 HIS OR HER AUTHORIZED REPRESENTATIVE SHALL HAVE POWER:

18 1. TO INVESTIGATE THE WAGES OF PERSONS IN ANY OCCUPATION IN THE STATE;

19 2. TO ENTER THE PLACE OF BUSINESS OR EMPLOYMENT OF ANY EMPLOYER FOR
20 THE PURPOSE OF: (A) EXAMINING AND INSPECTING ANY AND ALL BOOKS, REGIS-
21 TERS, PAYROLLS AND OTHER RECORDS THAT IN ANY WAY RELATE TO OR HAVE A
22 BEARING UPON THE WAGES PAID TO, OR THE HOURS WORKED BY ANY EMPLOYEES;
23 (B) ASCERTAINING WHETHER THE PROVISIONS OF THIS ARTICLE AND THE ORDERS
24 AND REGULATIONS PROMULGATED HEREUNDER ARE BEING COMPLIED WITH; AND

25 3. TO REQUIRE FROM ANY EMPLOYER FULL AND CORRECT STATEMENTS AND
26 REPORTS IN WRITING, AT SUCH TIMES AS THE COMMISSIONER MAY DEEM NECES-
27 SARY, OF THE WAGES PAID TO AND THE HOURS WORKED BY HIS OR HER EMPLOYEES.

28 S 696-E. CIVIL ACTION. 1. IF ANY EMPLOYEE IS PAID BY HIS OR HER
29 EMPLOYER LESS THAN THE WAGE TO WHICH HE OR SHE IS ENTITLED UNDER THE
30 PROVISIONS OF THIS ARTICLE, HE OR SHE SHALL RECOVER IN A CIVIL ACTION
31 THE AMOUNT OF ANY SUCH UNDERPAYMENTS, TOGETHER WITH COSTS, ALL REASON-
32 ABLE ATTORNEY'S FEES, PREJUDGMENT INTEREST AS REQUIRED UNDER THE CIVIL
33 PRACTICE LAW AND RULES, AND UNLESS THE EMPLOYER PROVES A GOOD FAITH
34 BASIS TO BELIEVE THAT ITS UNDERPAYMENT OF WAGES WAS IN COMPLIANCE WITH
35 THE LAW, AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO ONE HUNDRED
36 PERCENT OF THE TOTAL OF SUCH UNDERPAYMENTS FOUND TO BE DUE. ANY AGREE-
37 MENT BETWEEN THE EMPLOYEE, AND THE EMPLOYER TO WORK FOR LESS THAN SUCH
38 WAGE SHALL BE NO DEFENSE TO SUCH ACTION.

39 2. ON BEHALF OF ANY EMPLOYEE PAID LESS THAN THE WAGE TO WHICH THE
40 EMPLOYEE IS ENTITLED UNDER THE PROVISIONS OF THIS ARTICLE, THE COMMIS-
41 SIONER MAY BRING ANY LEGAL ACTION NECESSARY, INCLUDING ADMINISTRATIVE
42 ACTION, TO COLLECT SUCH CLAIM, AND THE EMPLOYER SHALL BE REQUIRED TO PAY
43 THE FULL AMOUNT OF THE UNDERPAYMENT, PLUS COSTS, AND UNLESS THE EMPLOYER
44 PROVES A GOOD FAITH BASIS TO BELIEVE THAT ITS UNDERPAYMENT WAS IN
45 COMPLIANCE WITH THE LAW, AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES.
46 LIQUIDATED DAMAGES SHALL BE CALCULATED BY THE COMMISSIONER AS NO MORE
47 THAN ONE HUNDRED PERCENT OF THE TOTAL AMOUNT OF UNDERPAYMENTS FOUND TO
48 BE DUE THE EMPLOYEE. IN ANY ACTION BROUGHT BY THE COMMISSIONER IN A
49 COURT OF COMPETENT JURISDICTION, LIQUIDATED DAMAGES SHALL BE CALCULATED
50 AS AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF UNDERPAYMENTS FOUND TO BE
51 DUE THE EMPLOYEE.

52 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION TO RECOVER
53 UPON A LIABILITY IMPOSED BY THIS ARTICLE MUST BE COMMENCED WITHIN SIX
54 YEARS. THE STATUTE OF LIMITATIONS SHALL BE TOLLED FROM THE DATE AN
55 EMPLOYEE FILES A COMPLAINT WITH THE COMMISSIONER OR THE COMMISSIONER
56 COMMENCES AN INVESTIGATION, WHICHEVER IS EARLIER, UNTIL AN ORDER TO

1 COMPLY ISSUED BY THE COMMISSIONER BECOMES FINAL, OR WHERE THE COMMIS-
2 SIONER DOES NOT ISSUE AN ORDER, UNTIL THE DATE ON WHICH THE COMMISSIONER
3 NOTIFIES THE COMPLAINANT THAT THE INVESTIGATION HAS CONCLUDED. INVESTI-
4 GATION BY THE COMMISSIONER SHALL NOT BE A PREREQUISITE TO NOR A BAR
5 AGAINST A PERSON BRINGING A CIVIL ACTION UNDER THIS ARTICLE.

6 4. IN ANY CIVIL ACTION BY AN EMPLOYEE OR BY THE COMMISSIONER, THE
7 EMPLOYEE OR COMMISSIONER SHALL HAVE THE RIGHT TO COLLECT ATTORNEYS' FEES
8 AND COSTS INCURRED IN ENFORCING ANY COURT JUDGMENT. ANY JUDGMENT OR
9 COURT ORDER AWARDING REMEDIES UNDER THIS SECTION SHALL PROVIDE THAT IF
10 ANY AMOUNTS REMAIN UNPAID UPON THE EXPIRATION OF NINETY DAYS FOLLOWING
11 ISSUANCE OF JUDGMENT, OR NINETY DAYS AFTER EXPIRATION OF THE TIME TO
12 APPEAL AND NO APPEAL THEREFROM IS THEN PENDING, WHICHEVER IS LATER, THE
13 TOTAL AMOUNT OF JUDGMENT SHALL AUTOMATICALLY INCREASE BY FIFTEEN
14 PERCENT.

15 S 2. Severability. If any clause, sentence, paragraph, section or part
16 of this act shall be adjudged by any court of competent jurisdiction to
17 be invalid and after exhaustion of all further judicial review, the
18 judgment shall not affect, impair or invalidate the remainder thereof,
19 but shall be confined in its operation to the clause, sentence, para-
20 graph, section or part of this act directly involved in the controversy
21 in which the judgment shall have been rendered.

22 S 3. This act shall take effect on the ninetieth day after it shall
23 have become a law.