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I N S E N A T E

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Introduced by Sens. SAVINO, ADDABBO, AVELLA, BOYLE, DILAN, GOLDEN, HASSELL-THOMPSON, KRUEGER, LATIMER, MARTINS, PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the labor law, in relation to enacting the "New York state commercial goods transportation industry fair play act"; and to amend the workers' compensation law, in relation to the definition of employee

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 25-C to
2 read as follows:

3 ARTICLE 25-C

4 THE NEW YORK STATE COMMERCIAL GOODS TRANSPORTATION INDUSTRY
5 FAIR PLAY ACT

6 SECTION 862. SHORT TITLE.

7 862-A. DEFINITIONS.

8 862-B. PRESUMPTION OF EMPLOYMENT IN THE COMMERCIAL GOODS TRANS-
9 PORTATION INDUSTRY.

10 862-C. NOTICE TO PERSONS RECEIVING REMUNERATION FROM COMMERCIAL
11 GOODS TRANSPORTATION CONTRACTORS AND COMMERCIAL GOODS
12 TRANSPORTATION SUBCONTRACTORS.

13 862-D. VIOLATIONS AND PENALTIES.

14 862-E. RETALIATION.

15 S 862. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
16 THE "NEW YORK STATE COMMERCIAL GOODS TRANSPORTATION INDUSTRY FAIR PLAY
17 ACT".

18 S 862-A. DEFINITIONS. AS USED IN THIS ARTICLE:

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

LBD00724-03-3

1 1. "COMMERCIAL GOODS TRANSPORTATION CONTRACTOR" MEANS ANY SOLE PROPRI-
2 ETOR, PARTNERSHIP, FIRM, CORPORATION, LIMITED LIABILITY COMPANY, ASSOCI-
3 ATION OR OTHER LEGAL ENTITY PERMITTED BY LAW TO DO BUSINESS WITHIN THE
4 STATE WHO COMPENSATES COMMERCIAL VEHICLE DRIVERS WHO POSSESSES A STATE-
5 ISSUED COMMERCIAL DRIVER'S LICENSE TO TRANSPORT GOODS IN THE STATE OF
6 NEW YORK.

7 2. "COMMERCIAL GOODS TRANSPORTATION CONTRACTOR" INCLUDES A GENERAL
8 COMMERCIAL GOODS TRANSPORTATION CONTRACTOR OR A COMMERCIAL GOODS TRANS-
9 PORTATION SUBCONTRACTOR.

10 3. "COMMERCIAL GOODS TRANSPORTATION SERVICES" MEANS THE TRANSPORTATION
11 OF GOODS FOR COMPENSATION BY A COMMERCIAL VEHICLE DRIVER WHO POSSESSES A
12 STATE-ISSUED COMMERCIAL DRIVER'S LICENSE AND TRANSPORTS GOODS IN THE
13 STATE OF NEW YORK.

14 4. "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR.

15 5. "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR.

16 6. "EMPLOYER" MEANS ANY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR
17 WHICH COMPENSATES COMMERCIAL VEHICLE DRIVERS WHO POSSESS A STATE-ISSUED
18 COMMERCIAL DRIVER'S LICENSE TO TRANSPORT GOODS IN THE STATE OF NEW YORK.

19 S 862-B. PRESUMPTION OF EMPLOYMENT IN THE COMMERCIAL GOODS TRANSPORTA-
20 TION INDUSTRY. 1. ANY PERSON PERFORMING COMMERCIAL GOODS TRANSPORTATION
21 SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR SHALL BE CLAS-
22 SIFIED AS AN EMPLOYEE UNLESS THE PERSON IS A SEPARATE BUSINESS ENTITY
23 UNDER SUBDIVISION TWO OF THIS SECTION OR ALL OF THE FOLLOWING CRITERIA
24 ARE MET, IN WHICH CASE THE PERSON SHALL BE AN INDEPENDENT CONTRACTOR:

25 (A) THE INDIVIDUAL IS FREE FROM CONTROL AND DIRECTION IN PERFORMING
26 THE JOB, BOTH UNDER HIS OR HER CONTRACT AND IN FACT;

27 (B) THE SERVICE MUST BE PERFORMED OUTSIDE THE USUAL COURSE OF BUSINESS
28 FOR WHICH THE SERVICE IS PERFORMED; AND

29 (C) THE INDIVIDUAL IS CUSTOMARILY ENGAGED IN AN INDEPENDENTLY ESTAB-
30 LISHED TRADE, OCCUPATION, PROFESSION, OR BUSINESS THAT IS SIMILAR TO THE
31 SERVICE AT ISSUE.

32 2. A BUSINESS ENTITY, INCLUDING ANY SOLE PROPRIETOR, PARTNERSHIP,
33 CORPORATION OR ENTITY THAT MAY BE A COMMERCIAL GOODS TRANSPORTATION
34 CONTRACTOR UNDER THIS SECTION SHALL BE CONSIDERED A SEPARATE BUSINESS
35 ENTITY FROM THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WHERE ALL THE
36 FOLLOWING CRITERIA ARE MET:

37 (A) THE BUSINESS ENTITY IS PERFORMING THE SERVICE FREE FROM THE DIREC-
38 TION OR CONTROL OVER THE MEANS AND MANNER OF PROVIDING THE SERVICE,
39 SUBJECT ONLY TO THE RIGHT OF THE COMMERCIAL GOODS TRANSPORTATION
40 CONTRACTOR FOR WHOM THE SERVICE IS PROVIDED TO SPECIFY THE DESIRED
41 RESULT OR FEDERAL RULE OR REGULATION;

42 (B) THE BUSINESS ENTITY IS NOT SUBJECT TO CANCELLATION OR DESTRUCTION
43 UPON SEVERANCE OF THE RELATIONSHIP WITH THE COMMERCIAL GOODS TRANSPORTA-
44 TION CONTRACTOR;

45 (C) THE BUSINESS ENTITY HAS A SUBSTANTIAL INVESTMENT OF CAPITAL IN THE
46 BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO ORDINARY TOOLS AND EQUIP-
47 MENT;

48 (D) THE BUSINESS ENTITY OWNS THE CAPITAL GOODS AND GAINS THE PROFITS
49 AND BEARS THE LOSSES OF THE BUSINESS ENTITY;

50 (E) THE BUSINESS ENTITY HAS AN OPTION TO MAKE ITS SERVICES AVAILABLE
51 TO THE GENERAL PUBLIC OR THE BUSINESS COMMUNITY ON A CONTINUING BASIS;

52 (F) THE BUSINESS ENTITY INCLUDES SERVICES RENDERED ON A FEDERAL INCOME
53 TAX SCHEDULE AS AN INDEPENDENT BUSINESS OR PROFESSION;

54 (G) THE BUSINESS ENTITY PERFORMS SERVICES FOR THE COMMERCIAL GOODS
55 TRANSPORTATION CONTRACTOR UNDER THE BUSINESS ENTITY'S NAME PURSUANT TO A

1 WRITTEN CONTRACT SPECIFYING THEIR RELATIONSHIP TO BE AS INDEPENDENT
2 CONTRACTORS OR SEPARATE BUSINESS ENTITIES;

3 (H) WHEN THE SERVICES BEING PROVIDED REQUIRE A LICENSE OR PERMIT, THE
4 BUSINESS ENTITY PAYS FOR THE LICENSE OR PERMIT IN THE BUSINESS ENTITY'S
5 NAME OR, WHERE PERMITTED BY LAW, PAYS FOR REASONABLE USE OF THE COMMER-
6 CIAL GOODS TRANSPORTATION CONTRACTOR'S LICENSE OR PERMIT;

7 (I) IF NECESSARY, THE BUSINESS ENTITY HIRES ITS OWN EMPLOYEES WITHOUT
8 THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR'S APPROVAL, PAYS THE
9 EMPLOYEES WITHOUT REIMBURSEMENT FROM THE COMMERCIAL GOODS TRANSPORTATION
10 CONTRACTOR AND REPORTS THE EMPLOYEES' INCOME TO THE INTERNAL REVENUE
11 SERVICE;

12 (J) THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR DOES NOT REQUIRE
13 THAT THE BUSINESS ENTITY BE REPRESENTED AS AN EMPLOYEE OF THE COMMERCIAL
14 GOODS TRANSPORTATION CONTRACTOR TO ITS CUSTOMERS; AND

15 (K) THE BUSINESS ENTITY HAS THE RIGHT TO PERFORM SIMILAR SERVICES FOR
16 OTHERS ON WHATEVER BASIS AND WHENEVER IT CHOOSES.

17 3. THE FAILURE TO WITHHOLD FEDERAL OR STATE INCOME TAXES OR TO PAY
18 UNEMPLOYMENT COMPENSATION CONTRIBUTIONS OR WORKERS' COMPENSATION PREMI-
19 UMS WITH RESPECT TO AN INDIVIDUAL'S WAGES SHALL NOT BE CONSIDERED IN
20 MAKING A DETERMINATION UNDER THIS SECTION, EXCEPT AS SET FORTH IN PARA-
21 GRAPH (F) OF SUBDIVISION TWO OF THIS SECTION.

22 4. AN INDIVIDUAL'S ACT OF SECURING WORKERS' COMPENSATION INSURANCE
23 WITH A CARRIER AS A SOLE PROPRIETOR, PARTNERSHIP OR OTHERWISE SHALL NOT
24 BE BINDING ON ANY DETERMINATION UNDER THIS SECTION.

25 5. WHEN A BUSINESS ENTITY MEETS THE DEFINITION OF A SEPARATE BUSINESS
26 ENTITY PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE SEPARATE BUSI-
27 NESS ENTITY WILL BE CONSIDERED A COMMERCIAL GOODS TRANSPORTATION
28 CONTRACTOR SUBJECT TO ALL THE PROVISIONS OF THIS ARTICLE IN REGARD TO
29 THE CLASSIFICATION OF INDIVIDUALS PERFORMING SERVICES FOR IT.

30 S 862-C. NOTICE TO PERSONS RECEIVING REMUNERATION FROM COMMERCIAL
31 GOODS TRANSPORTATION CONTRACTORS AND COMMERCIAL GOODS TRANSPORTATION
32 SUBCONTRACTORS. 1. EVERY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR
33 SHALL POST IN A PROMINENT AND ACCESSIBLE PLACE ON THE SITE WHERE COMMER-
34 CIAL GOODS TRANSPORTATION ACTIVITY IS CONDUCTED A LEGIBLE STATEMENT,
35 PROVIDED BY THE COMMISSIONER, THAT DESCRIBES THE RESPONSIBILITY OF INDE-
36 PENDENT CONTRACTORS TO PAY TAXES REQUIRED BY STATE AND FEDERAL LAW, THE
37 RIGHTS OF EMPLOYEES TO WORKERS' COMPENSATION, UNEMPLOYMENT BENEFITS,
38 MINIMUM WAGE, OVERTIME AND OTHER FEDERAL AND STATE WORKPLACE
39 PROTECTIONS, AND THE PROTECTIONS AGAINST RETALIATION AND THE PENALTIES
40 IN THIS ARTICLE IF THE CONTRACTOR FAILS TO PROPERLY CLASSIFY AN INDIVID-
41 UAL AS AN EMPLOYEE. THIS NOTICE SHALL ALSO CONTAIN CONTACT INFORMATION
42 FOR INDIVIDUALS TO FILE COMPLAINTS OR INQUIRE WITH THE COMMISSIONER
43 ABOUT EMPLOYMENT CLASSIFICATION STATUS. THIS INFORMATION SHALL BE
44 PROVIDED IN ENGLISH, SPANISH OR OTHER LANGUAGES REQUIRED BY THE COMMIS-
45 SIONER. THE POSTED STATEMENT SHALL BE CONSTRUCTED OF MATERIALS CAPABLE
46 OF WITHSTANDING ADVERSE WEATHER CONDITIONS.

47 2. WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS ARTICLE, THE
48 COMMISSIONER SHALL CREATE THE NOTICE DESCRIBED IN SUBDIVISION ONE OF
49 THIS SECTION AND POST THE NOTICE ON THE DEPARTMENT'S WEBSITE FOR DOWN-
50 LOADING BY COMMERCIAL GOODS TRANSPORTATION CONTRACTORS.

51 3. COMMERCIAL GOODS TRANSPORTATION CONTRACTORS WHO VIOLATE THIS
52 SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO ONE THOUSAND FIVE
53 HUNDRED DOLLARS FOR A FIRST VIOLATION, AND UP TO FIVE THOUSAND DOLLARS
54 FOR A SUBSEQUENT VIOLATION WITHIN A FIVE YEAR PERIOD.

55 S 862-D. VIOLATIONS AND PENALTIES. 1. ANY COMMERCIAL GOODS TRANSPORTA-
56 TION CONTRACTOR WHO WILLFULLY FAILS TO PROPERLY CLASSIFY AN INDIVIDUAL

1 AS AN EMPLOYEE AS PROVIDED UNDER SECTION EIGHT HUNDRED SIXTY-TWO-B OF
2 THIS ARTICLE SHALL BE SUBJECT TO THE CIVIL AND CRIMINAL PENALTIES
3 PROVIDED UNDER THIS SECTION. THE CIVIL PENALTIES SET FORTH IN THIS
4 SECTION SHALL BE IMPOSED AS FOLLOWS: BY THE COMMISSIONER WHERE SUCH
5 PENALTY IS BASED ON A VIOLATION OF THIS CHAPTER; BY THE CHAIR OF THE
6 WORKERS' COMPENSATION BOARD WHERE SUCH PENALTY IS BASED ON A VIOLATION
7 OF THE WORKERS' COMPENSATION LAW; AND BY THE COMMISSIONER OF TAXATION
8 AND FINANCE WHEN SUCH PENALTY IS BASED ON A VIOLATION OF THE TAX LAW,
9 PROVIDED THAT NO MORE THAN ONE CIVIL PENALTY UNDER THIS SECTION MAY BE
10 IMPOSED PER EMPLOYEE PER INCIDENT OF MISCLASSIFICATION.

11 (A) THE WORKERS' COMPENSATION BOARD SHALL PROVIDE A COPY OF ANY ORDER
12 RELATING TO THE MISCLASSIFICATION OF AN EMPLOYEE, THE INTENTIONAL AND
13 MATERIAL UNDERPAYMENT OR CONCEALMENT OF PAYROLL, OR THE FAILURE TO
14 SECURE WORKERS' COMPENSATION IN THE COMMERCIAL GOODS TRANSPORTATION
15 INDUSTRY TO THE COMMISSIONER AND COMMISSIONER OF TAXATION AND FINANCE NO
16 LATER THAN SEVEN DAYS AFTER THE ISSUANCE OF THE ORDER.

17 (B) NOTWITHSTANDING THE SECRECY PROVISIONS CONTAINED IN ARTICLES
18 NINE-A AND TWENTY-TWO OF THE TAX LAW, THE DEPARTMENT OF TAXATION AND
19 FINANCE SHALL PROVIDE A COPY OF ANY ASSESSMENT FOR FAILURE TO PAY BUSI-
20 NESS, CORPORATE OR PERSONAL INCOME TAX BY AN EMPLOYER IN THE COMMERCIAL
21 GOODS TRANSPORTATION INDUSTRY ARISING OUT OF THE MISCLASSIFICATION OF AN
22 EMPLOYEE TO THE COMMISSIONER AND CHAIR OF THE WORKERS' COMPENSATION
23 BOARD NO LATER THAN SEVEN DAYS AFTER THE ISSUANCE OF THE ASSESSMENT.

24 (C) UPON THE ISSUANCE OF AN ORDER OR DETERMINATION BY THE COMMISSIONER
25 FOR A VIOLATION AND PENALTIES UNDER THIS ARTICLE, THE COMMISSIONER SHALL
26 PROVIDE A COPY OF THE ORDER TO THE CHAIR OF THE WORKERS' COMPENSATION
27 BOARD AND THE COMMISSIONER OF TAXATION AND FINANCE NO LATER THAN SEVEN
28 DAYS AFTER THE ISSUANCE OF THE ORDER.

29 2. FOR THE PURPOSES OF THIS SECTION, THE TERM "WILLFULLY VIOLATES"
30 MEANS A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR KNEW OR SHOULD HAVE
31 KNOWN THAT HIS OR HER CONDUCT WAS PROHIBITED BY THIS SECTION.

32 3. ANY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WHO WILLFULLY
33 VIOLATES SECTION EIGHT HUNDRED SIXTY-TWO-B OF THIS ARTICLE SHALL BE
34 SUBJECT TO A CIVIL PENALTY OF UP TO TWENTY-FIVE HUNDRED DOLLARS FOR THE
35 FIRST VIOLATION PER MISCLASSIFIED EMPLOYEE AND TO A CIVIL PENALTY OF UP
36 TO FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION PER MISCLASSIFIED
37 EMPLOYEE WITHIN A FIVE YEAR PERIOD.

38 4. IN ADDITION TO CIVIL PENALTIES, THE CRIMINAL PENALTIES IMPOSED ON A
39 COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WHO WILLFULLY VIOLATES THE
40 PROVISIONS OF THIS ARTICLE SHALL BE A MISDEMEANOR AND UPON CONVICTION
41 SHALL BE PUNISHED FOR A FIRST OFFENSE BY IMPRISONMENT FOR NOT MORE THAN
42 THIRTY DAYS OR A FINE NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS AND FOR
43 A SUBSEQUENT OFFENSE BY IMPRISONMENT FOR NOT MORE THAN SIXTY DAYS OR A
44 FINE NOT TO EXCEED FIFTY THOUSAND DOLLARS.

45 5. IF THE COMMERCIAL GOODS TRANSPORTATION CONTRACTOR IS A CORPORATION,
46 ANY OFFICER OF SUCH CORPORATION OR SHAREHOLDER WHO OWNS OR CONTROLS AT
47 LEAST TEN PERCENT OF THE OUTSTANDING STOCK OF SUCH CORPORATION WHO KNOW-
48 INGLY PERMITS THE CORPORATION TO WILLFULLY VIOLATE THE PROVISIONS OF
49 THIS ARTICLE SHALL ALSO BE IN VIOLATION OF THIS ARTICLE AND THE CIVIL
50 AND CRIMINAL PENALTIES HEREIN SHALL ATTACH TO SUCH OFFICER UPON
51 CONVICTION.

52 6. ANY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR SUBJECT TO CIVIL
53 PENALTIES UNDER THIS ARTICLE SHALL ALSO BE SUBJECT TO ANY OTHER APPLICA-
54 BLE PENALTIES OR REMEDIES PROVIDED BY LAW FOR FAILURE TO PAY ANY OTHER
55 STATUTORY PAYMENT OR COVERAGE OBLIGATIONS, INCLUDING BUT NOT LIMITED TO,

1 UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION INSURANCE, OR BUSINESS,
2 CORPORATE OR PERSONAL INCOME TAX, AS FOLLOWS:

3 (A) FOR FAILURE TO PAY UNEMPLOYMENT INSURANCE TAX, THE PENALTIES
4 IMPOSED BY SECTION FIVE HUNDRED SEVENTY OF THIS CHAPTER.

5 (B) FOR INTENTIONAL AND MATERIAL UNDERSTATEMENT OR CONCEALMENT OF
6 PAYROLL OR FAILURE TO SECURE WORKERS' COMPENSATION INSURANCE, THE PENAL-
7 TIES IMPOSED BY PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION FIFTY-TWO OF
8 THE WORKERS' COMPENSATION LAW, AND FOR FAILURE TO KEEP A TRUE AND ACCU-
9 RATE RECORD PURSUANT TO SECTION ONE HUNDRED THIRTY-ONE OF THE WORKERS'
10 COMPENSATION LAW, THE PENALTIES OF SECTION ONE HUNDRED THIRTY-ONE OF THE
11 WORKERS' COMPENSATION LAW.

12 (C) FOR FAILURE TO PAY BUSINESS, CORPORATE OR PERSONAL INCOME TAX, THE
13 PENALTIES IMPOSED BY SECTION SIX HUNDRED EIGHTY-FIVE AND ONE THOUSAND
14 EIGHTY-FIVE OF THE TAX LAW.

15 7. ANY COMMERCIAL GOODS TRANSPORTATION CONTRACTOR OR ANY OFFICER OR
16 SHAREHOLDER WHO OWNS OR CONTROLS AT LEAST TEN PERCENT OF THE OUTSTANDING
17 STOCK OF SUCH CORPORATION THAT HAS BEEN CONVICTED OF A MISDEMEANOR SHALL
18 BE SUBJECT TO DEBARMENT AND BE INELIGIBLE TO SUBMIT A BID ON OR BE
19 AWARDED ANY PUBLIC WORKS CONTRACT WITH THE STATE, ANY MUNICIPAL CORPO-
20 RATION, PUBLIC BENEFIT CORPORATION, PUBLIC AUTHORITY OR PUBLIC BODY FOR
21 A PERIOD OF UP TO ONE YEAR FROM THE DATE OF SUCH CONVICTION OR FINAL
22 DETERMINATION, OR UP TO FIVE YEARS IN THE EVENT OF ANY SUBSEQUENT
23 VIOLATION.

24 8. ANY SUBSTANTIALLY OWNED AFFILIATED ENTITY OF A COMMERCIAL GOODS
25 TRANSPORTATION CONTRACTOR, AS DEFINED BY PARAGRAPH G OF SUBDIVISION FIVE
26 OF SECTION TWO HUNDRED TWENTY OF THIS CHAPTER, SHALL BE SUBJECT TO THE
27 SAME CIVIL PENALTY PROVIDED UNDER THIS ARTICLE FOR A VIOLATION OF SUCH
28 PROVISION.

29 9. ANY PENALTIES IMPOSED UNDER THIS SECTION BY THE COMMISSIONER SHALL
30 BE APPEALED TO THE INDUSTRIAL BOARD OF APPEALS IN ACCORDANCE WITH ARTI-
31 CLE THREE OF THIS CHAPTER. ANY PENALTIES IMPOSED UNDER THIS SECTION BY
32 THE WORKERS' COMPENSATION BOARD OR COMMISSIONER OF TAXATION AND FINANCE
33 SHALL BE APPEALED IN THE SAME MANNER AS THE UNDERLYING VIOLATION.

34 10. NOTHING IN THIS SECTION SHALL LIMIT THE AVAILABILITY OF OTHER
35 REMEDIES AT LAW OR IN EQUITY FOR A VIOLATION OF THIS ARTICLE.

36 11. ANY FEE OR PENALTY ASSESSED FOR A VIOLATION OF THIS ARTICLE SHALL
37 BE DEPOSITED INTO THE DEPARTMENT'S FEE AND PENALTY ACCOUNT.

38 S 862-E. RETALIATION. 1. IT IS A VIOLATION OF THIS ARTICLE FOR AN
39 EMPLOYER OR ANY AGENT OF ANY EMPLOYER, TO RETALIATE THROUGH DISCHARGE OR
40 IN ANY OTHER MANNER AGAINST ANY PERSON IN THE TERMS OF CONDITIONS OF HIS
41 OR HER EMPLOYMENT FOR EXERCISING ANY RIGHTS GRANTED UNDER THIS ARTICLE
42 FOR:

43 (A) MAKING, OR THREATENING TO MAKE, A COMPLAINT TO AN EMPLOYER,
44 CO-WORKER OR TO A PUBLIC BODY THAT RIGHTS GUARANTEED UNDER THIS ARTICLE
45 HAVE BEEN VIOLATED;

46 (B) CAUSING TO BE INSTITUTED ANY PROCEEDING UNDER OR RELATED TO THIS
47 ARTICLE; OR

48 (C) PROVIDING INFORMATION TO, OR TESTIFYING BEFORE, ANY PUBLIC BODY
49 CONDUCTING AN INVESTIGATION, HEARING OR INQUIRY INTO ANY SUCH VIOLATION
50 OF A LAW, RULE OR REGULATION BY SUCH EMPLOYER. NOTHING IN THIS SECTION
51 SHALL LIMIT THE COMMISSIONER'S AUTHORITY UNDER SECTION TWO HUNDRED
52 FIFTEEN OF THIS CHAPTER, OR ANY OTHER STATUTE.

53 2. ANY ACT OF RETALIATION UNDER THIS SECTION SHALL SUBJECT AN EMPLOYER
54 TO THE CIVIL PENALTIES UNDER SECTION EIGHT HUNDRED SIXTY-TWO-D OF THIS
55 ARTICLE, OR TO A PRIVATE CAUSE OF ACTION, OR BOTH.

1 S 2. Paragraph (b) of subdivision 1 of section 511 of the labor law is
2 amended by adding a new subparagraph 1-c to read as follows:

3 (1-C) AS AN EMPLOYEE IN THE COMMERCIAL GOODS TRANSPORTATION INDUSTRY
4 UNLESS THE PRESUMPTION OF EMPLOYMENT CAN BE OVERCOME, AS PROVIDED UNDER
5 SECTION EIGHT HUNDRED SIXTY-TWO-B OF THIS CHAPTER; OR

6 S 3. The opening paragraph of subdivision 4 of section 2 of the work-
7 ers' compensation law, as amended by chapter 418 of the laws of 2010, is
8 amended to read as follows:

9 "Employee" means a person engaged in one of the occupations enumerated
10 in section three of this article or who is in the service of an employer
11 whose principal business is that of carrying on or conducting a hazard-
12 ous employment upon the premises or at the plant, or in the course of
13 his or her employment away from the plant of his or her employer;
14 "employee" shall also mean for the purposes of this chapter any individ-
15 ual performing services in construction for a contractor who does not
16 overcome the presumption of employment as provided under section eight
17 hundred sixty-one-c of the labor law; "EMPLOYEE" SHALL ALSO MEAN FOR THE
18 PURPOSES OF THIS CHAPTER ANY INDIVIDUAL PERFORMING SERVICES IN THE
19 COMMERCIAL GOODS TRANSPORTATION INDUSTRY FOR A COMMERCIAL GOODS TRANS-
20 PORTATION CONTRACTOR WHO DOES NOT OVERCOME THE PRESUMPTION OF EMPLOYMENT
21 AS PROVIDED UNDER SECTION EIGHT HUNDRED SIXTY-TWO-B OF THE LABOR LAW;
22 "employee" shall also mean for the purposes of this chapter civil
23 defense volunteers who are personnel of volunteer agencies sponsored or
24 authorized by a local office under regulations of the civil defense
25 commission, to the extent of the provisions of groups seventeen and
26 nineteen; "employee" shall at the election of a municipal corporation
27 made pursuant to local law duly enacted also mean a member of an auxil-
28 iary police organization authorized by local law; and for the purposes
29 of this chapter only a newspaper carrier under the age of eighteen years
30 as defined in section thirty-two hundred twenty-eight of the education
31 law, and shall not include domestic servants except as provided in
32 section three of this chapter, and except where the employer has elected
33 to bring such employees under the law by securing compensation in
34 accordance with the terms of section fifty of this chapter. The term
35 "employee" shall not include persons who are members of a supervised
36 amateur athletic activity operated on a non-profit basis, provided that
37 said members are not also otherwise engaged or employed by any person,
38 firm or corporation participating in said athletic activity, nor shall
39 it include the spouse or minor child of an employer who is a farmer
40 unless the services of such spouse or minor child shall be engaged by
41 said employer under an express contract of hire nor shall it include an
42 executive officer of a corporation who at all times during the period
43 involved owns all of the issued and outstanding stock of the corporation
44 and holds all of the offices pursuant to paragraph (e) of section seven
45 hundred fifteen of the business corporation law or two executive offi-
46 cers of a corporation who at all times during the period involved
47 between them own all of the issued and outstanding stock of such corpo-
48 ration and hold all such offices except as provided in subdivision six
49 of section fifty-four of this chapter provided, however, that where
50 there are two executive officers of a corporation each officer must own
51 at least one share of stock, nor shall it include a self-employed person
52 or a partner of a partnership as defined in section ten of the partner-
53 ship law who is not covered under a compensation insurance contract or a
54 certificate of self-insurance as provided in subdivision eight of
55 section fifty-four of this chapter, nor shall it include farm laborers
56 except as provided in group fourteen-b of section three of this chapter.

1 If a farm labor contractor recruits or supplies farm laborers for work
2 on a farm, such farm laborers shall for the purposes of this chapter be
3 deemed to be employees of the owner or lessee of such farm. The term
4 "employee" shall not include baby sitters as defined in subdivision
5 three of section one hundred thirty-one and subdivision three of section
6 one hundred thirty-two of the labor law or minors fourteen years of age
7 or over engaged in casual employment consisting of yard work and house-
8 hold chores in and about a one family owner-occupied residence or the
9 premises of a non-profit, non-commercial organization, not involving the
10 use of power-driven machinery. The term "employee" shall not include
11 persons engaged by the owner in casual employment consisting of yard
12 work, household chores and making repairs to or painting in and about a
13 one-family owner-occupied residence. The term "employee" shall not
14 include the services of a licensed real estate broker or sales associate
15 if it be proven that (a) substantially all of the remuneration (whether
16 or not paid in cash) for the services performed by such broker or sales
17 associate is directly related to sales or other output (including the
18 performance of services) rather than to the number of hours worked; (b)
19 the services performed by the broker or sales associate are performed
20 pursuant to a written contract executed between such broker or sales
21 associate and the person for whom the services are performed within the
22 past twelve to fifteen months; and (c) the written contract provided for
23 in paragraph (b) of this subdivision was not executed under duress and
24 contains the following provisions:

25 S 4. Notwithstanding any other provision of law to the contrary, the
26 provisions of section 862-b of the labor law, as added by section one of
27 this act, shall apply to and be utilized for all determinations of a
28 commercial goods transportation industry individual's employment status
29 under the labor law and the workers' compensation law, but not the tax
30 law.

31 S 5. This act shall take effect on the sixtieth day after it shall
32 have become a law.