

5885--A

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

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:

1 Section 1. Paragraph (a) of subdivision 1 of section 195 of the labor
2 law, as amended by chapter 564 of the laws of 2010, is amended to read
3 as follows:
4 (a) provide his or her employees, in writing in English and in the
5 language identified by each employee as the primary language of such
6 employee, at the time of hiring[, and on or before February first of
7 each subsequent year of the employee's employment with the employer], a
8 notice containing the following information: the rate or rates of pay
9 and basis thereof, whether paid by the hour, shift, day, week, salary,
10 piece, commission, or other; allowances, if any, claimed as part of the
11 minimum wage, including tip, meal, or lodging allowances; the regular
12 pay day designated by the employer in accordance with section one
13 hundred ninety-one of this article; the name of the employer; any "doing
14 business as" names used by the employer; the physical address of the
15 employer's main office or principal place of business, and a mailing
16 address if different; the telephone number of the employer; plus such
17 other information as the commissioner deems material and necessary. Each
18 time the employer provides such notice to an employee, the employer
19 shall obtain from the employee a signed and dated written acknowledge-

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

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1 ment, in English and in the primary language of the employee, of receipt
2 of this notice, which the employer shall preserve and maintain for six
3 years. Such acknowledgement shall include an affirmation by the employee
4 that the employee accurately identified his or her primary language to
5 the employer, and that the notice provided by the employer to such
6 employee pursuant to this subdivision was in the language so identified
7 or otherwise complied with paragraph (c) of this subdivision, and shall
8 conform to any additional requirements established by the commissioner
9 with regard to content and form. For all employees who are not exempt
10 from overtime compensation as established in the commissioner's minimum
11 wage orders or otherwise provided by New York state law or regulation,
12 the notice must state the regular hourly rate and overtime rate of pay;

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

16 1-b. If any employee is not provided within ten business days of his
17 or her first day of employment a notice as required by subdivision one
18 of section one hundred ninety-five of this article, he or she may
19 recover in a civil action damages of fifty dollars for each work [week]
20 DAY that the violations occurred or continue to occur, but not to exceed
21 a total of [two] TWELVE thousand five hundred dollars, together with
22 costs and reasonable attorney's fees. The court may also award other
23 relief, including injunctive and declaratory relief, that the court in
24 its discretion deems necessary or appropriate.

25 On behalf of any employee not provided a notice as required by subdi-
26 vision one of section one hundred ninety-five of this article, the
27 commissioner may bring any legal action necessary, including administra-
28 tive action, to collect such claim, and as part of such legal action, in
29 addition to any other remedies and penalties otherwise available under
30 this article, the commissioner may assess against the employer damages
31 of fifty dollars for each work [week] DAY that the violations occurred
32 or continue to occur. In any action or administrative proceeding to
33 recover damages for violation of paragraph (d) of subdivision one of
34 section one hundred ninety-five of this article, it shall be an affirma-
35 tive defense that (i) the employer made complete and timely payment of
36 all wages due pursuant to this article or article nineteen or article
37 nineteen-A of this chapter to the employee who was not provided notice
38 as required by subdivision one of section one hundred ninety-five of
39 this article or (ii) the employer reasonably believed in good faith that
40 it was not required to provide the employee with notice pursuant to
41 subdivision one of section one hundred ninety-five of this article.

42 1-d. If any employee is not provided a statement or statements as
43 required by subdivision three of section one hundred ninety-five of this
44 article, he or she shall recover in a civil action damages of [one] TWO
45 hundred FIFTY dollars for each work [week] DAY that the violations
46 occurred or continue to occur, but not to exceed a total of [twenty-
47 five] TWELVE THOUSAND FIVE hundred dollars, together with costs and
48 reasonable attorney's fees. The court may also award other relief,
49 including injunctive and declaratory relief, that the court in its
50 discretion deems necessary or appropriate.

51 On behalf of any employee not provided a statement as required by
52 subdivision three of section one hundred ninety-five of this article,
53 the commissioner may bring any legal action necessary, including admin-
54 istrative action, to collect such claim, and as part of such legal
55 action, in addition to any other remedies and penalties otherwise avail-
56 able under this article, the commissioner may assess against the employ-

1 er damages of [one] TWO hundred FIFTY dollars for each work [week] DAY
2 that the violations occurred or continue to occur. In any action or
3 administrative proceeding to recover damages for violation of subdivi-
4 sion three of section one hundred ninety-five of this article, it shall
5 be an affirmative defense that (i) the employer made complete and timely
6 payment of all wages due pursuant to this article or articles nineteen
7 or nineteen-A of this chapter to the employee who was not provided
8 statements as required by subdivision three of section one hundred nine-
9 ty-five of this article or (ii) the employer reasonably believed in good
10 faith that it was not required to provide the employee with statements
11 pursuant to paragraph (e) of subdivision one of section one hundred
12 ninety-five of this article.

13 S 3. Subdivision 1 of section 218 of the labor law, as amended by
14 chapter 564 of the laws of 2010, the opening paragraph and second undes-
15 igned paragraph as further amended by section 104 of part A of chapter
16 62 of the laws of 2011, is amended and a new subdivision 5 is added to
17 read as follows:

18 1. If the commissioner determines that an employer has violated a
19 provision of article six (payment of wages), article nineteen (minimum
20 wage act), article nineteen-A (minimum wage standards and protective
21 labor practices for farm workers), section two hundred twelve-a, section
22 two hundred twelve-b, section one hundred sixty-one (day of rest) or
23 section one hundred sixty-two (meal periods) of this chapter, or a rule
24 or regulation promulgated thereunder, the commissioner shall issue to
25 the employer an order directing compliance therewith, which shall
26 describe particularly the nature of the alleged violation. A copy of
27 such order shall be provided to any employee who has filed a complaint
28 and any authorized representative of him or her. In addition to direct-
29 ing payment of wages, benefits or wage supplements found to be due, and
30 liquidated damages in the amount of one hundred percent of unpaid wages,
31 such order, if issued to an employer who previously has been found in
32 violation of those provisions, rules or regulations, or to an employer
33 whose violation is willful or egregious, shall direct payment to the
34 commissioner of an additional sum as a civil penalty in an amount not to
35 exceed double the total amount of wages, benefits, or wage supplements
36 found to be due. ADDITIONALLY, SUCH ORDER, IF ISSUED TO AN EMPLOYER WHO
37 PREVIOUSLY HAS BEEN FOUND IN VIOLATION OF THOSE PROVISIONS, RULES OR
38 REGULATIONS, OR TO AN EMPLOYER WHOSE VIOLATION IS WILLFUL OR EGREGIOUS,
39 SHALL DIRECT SUCH EMPLOYER TO REPORT, BY LOCATION, AND FOR SUCH PERIOD
40 AS THE COMMISSIONER SHALL DETERMINE, (A) THE NUMBER OF PERMANENT
41 FULL-TIME EMPLOYEES, THE NUMBER OF TEMPORARY FULL-TIME EMPLOYEES, THE
42 NUMBER OF PERMANENT PART-TIME EMPLOYEES, THE NUMBER OF TEMPORARY
43 PART-TIME EMPLOYEES, AND THE NUMBER OF TEMPORARY STAFFING AGENCY EMPLOY-
44 EES PERFORMING WORK FOR THE EMPLOYER; (B) THE HOURLY RATES OF SUCH
45 EMPLOYEES REPORTED IN THE FOLLOWING BRACKETS: THE STATE MINIMUM WAGE TO
46 \$9.99; \$10.00 TO \$11.99; \$12.00 TO \$14.99; AND \$15.00 OR MORE; (C) THE
47 NUMBER OF EMPLOYEES WHO REGULARLY WORKED THE FOLLOWING NUMBER OF HOURS
48 PER WEEK DURING THE RELEVANT CALENDAR PERIOD: AT LEAST SIXTY; AT LEAST
49 FIFTY BUT FEWER THAN SIXTY; AT LEAST FORTY, BUT FEWER THAN FIFTY; AT
50 LEAST THIRTY-FIVE BUT FEWER THAN FORTY; AT LEAST THIRTY BUT FEWER THAN
51 THIRTY-FIVE; AT LEAST TWENTY-FIVE BUT FEWER THAN THIRTY; AT LEAST TWENTY
52 BUT FEWER THAN TWENTY-FIVE; AT LEAST TEN BUT FEWER THAN TWENTY; AT LEAST
53 FIVE BUT FEWER THAN TEN; FEWER THAN FIVE. NO INDIVIDUAL IDENTIFYING
54 INFORMATION OF SUCH EMPLOYEES SHALL BE REPORTED OR OTHERWISE DISCLOSED
55 TO THE DEPARTMENT. THE DEPARTMENT SHALL POST THE DATA COLLECTED ON THE
56 DEPARTMENT'S WEBSITE. FOR THE PURPOSES OF THIS SECTION, TEMPORARY

1 EMPLOYEES SHALL BE THOSE EMPLOYEES WHO ARE HIRED FOR A PERIOD OF SIXTY
2 DAYS OR LESS DURING THE RELEVANT CALENDAR YEAR, FULL-TIME EMPLOYEES
3 SHALL BE THOSE REGULARLY WORKING FORTY HOURS OR MORE PER WEEK DURING THE
4 RELEVANT CALENDAR YEAR, PART-TIME EMPLOYEES SHALL BE THOSE WORKING LESS
5 THAN FORTY HOURS PER WEEK DURING THE RELEVANT CALENDAR YEAR. In no case
6 shall the order direct payment of an amount less than the total wages,
7 benefits or wage supplements found by the commissioner to be due, plus
8 the liquidated damages in the amount of one hundred percent of unpaid
9 wages, the appropriate civil penalty, and interest at the rate of inter-
10 est then in effect, as prescribed by the superintendent of financial
11 services pursuant to section fourteen-a of the banking law per annum
12 from the date of the underpayment to the date of the payment. Where the
13 violation is for a reason other than the employer's failure to pay
14 wages, benefits or wage supplements found to be due, the order shall
15 direct payment to the commissioner of a civil penalty in an amount not
16 to exceed one thousand dollars for a first violation, two thousand
17 dollars for a second violation or three thousand dollars for a third or
18 subsequent violation. In assessing the amount of the penalty, the
19 commissioner shall give due consideration to the size of the employer's
20 business, the good faith basis of the employer to believe that its
21 conduct was in compliance with the law, the gravity of the violation,
22 the history of previous violations and, in the case of wages, benefits
23 or supplements violations, the failure to comply with recordkeeping or
24 other non-wage requirements.

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

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

48 5. AN EMPLOYER SIMILAR IN OPERATION AND OWNERSHIP TO A PRIOR EMPLOYER
49 WHICH HAD BEEN FOUND IN VIOLATION OF ARTICLE SIX, NINETEEN OR NINETEEN-A
50 OF THIS CHAPTER, SHALL BE DEEMED THE SAME EMPLOYER FOR THE PURPOSES OF
51 THIS SECTION IF THE EMPLOYEES OF THE NEW EMPLOYER ARE ENGAGED IN
52 SUBSTANTIALLY THE SAME WORK IN SUBSTANTIALLY THE SAME WORKING CONDITIONS
53 UNDER SUBSTANTIALLY THE SAME SUPERVISORS, OR IF THE SUBSEQUENT EMPLOYER
54 HAS SUBSTANTIALLY THE SAME PRODUCTION PROCESS, PRODUCES SUBSTANTIALLY
55 THE SAME PRODUCTS AND HAS SUBSTANTIALLY THE SAME BODY OF CUSTOMERS. SUCH

1 SUBSEQUENT EMPLOYER SHALL CONTINUE TO BE SUBJECT TO THIS SECTION AND
2 LIABLE FOR THE ACTS OF THE PRIOR EMPLOYER UNDER THIS SECTION.

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

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

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

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

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

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

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

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

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

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

49 3. Provided that no proceeding for administrative or judicial review
50 as provided in this chapter shall then be pending and the time for
51 initiation of such proceeding shall have expired, the commissioner may
52 file with the county clerk of the county where the employer resides or
53 has a place of business the order of the commissioner or the decision of
54 the industrial board of appeals containing the amount found to be due,
55 including, at the commissioner's discretion, an additional fifteen
56 percent damages upon any outstanding monies owed. At the request of an

1 employee, [and at the discretion of the commissioner,] the commissioner
2 [may] SHALL assign that portion of the money due that constitutes wages,
3 wage supplements, interest on wages or wage supplements, or liquidated
4 damages due the employee, to that employee and file an order in that
5 amount in the name of such employee with the county clerk of the county
6 where the employer resides or has a place of business. The filing of
7 such order or decision shall have the full force and effect of a judg-
8 ment duly docketed in the office of such clerk. The order or decision
9 may be enforced by and in the name of the commissioner, OR BY THE
10 EMPLOYEE, in the same manner, and with like effect, as that prescribed
11 by the civil practice law and rules for the enforcement of a money judg-
12 ment.

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

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

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

30 S 861-G. CONTRACTOR ACCOUNTABILITY. WHEN A CONTRACTOR IS FOUND TO HAVE
31 FAILED TO PAY ALL WAGES AS REQUIRED BY ARTICLE SIX OR NINETEEN OF THIS
32 CHAPTER, EITHER BY A FINAL ORDER ISSUED BY THE COMMISSIONER, AN ASSUR-
33 ANCE OF DISCONTINUANCE OR FINAL SETTLEMENT WITH THE OFFICE OF THE ATTOR-
34 NEY GENERAL, OR A FINAL JUDGMENT OR ORDER OF A COURT OF COMPETENT JURIS-
35 DICTION, THE CONTRACTOR SHALL NOTIFY ALL OF ITS EMPLOYEES, AND ITS SUB-
36 CONTRACTORS' EMPLOYEES, OF THE NATURE OF THESE VIOLATIONS. NOTIFICATION
37 SUMMARIZING THE FINDINGS SHALL BE MADE VIA PAYCHECK ATTACHMENT TO
38 EMPLOYEES AT ALL WORKSITES ACCORDING TO SUCH FORM AND MANNER ORDERED BY
39 THE COMMISSIONER. THE COMMISSIONER SHALL HAVE THE AUTHORITY TO PROMUL-
40 GATE RULES NECESSARY TO EFFECTUATE THE TERMS OF THIS SECTION.

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

43 (C) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISIONS (A) AND (B) OF THIS
44 SECTION, THE TEN MEMBERS WITH THE LARGEST PERCENTAGE OWNERSHIP INTEREST,
45 AS DETERMINED AS OF THE BEGINNING OF THE PERIOD DURING WHICH THE UNPAID
46 SERVICES REFERRED TO IN THIS SECTION ARE PERFORMED, OF EVERY LIMITED
47 LIABILITY COMPANY, SHALL JOINTLY AND SEVERALLY BE PERSONALLY LIABLE FOR
48 ALL DEBTS, WAGES OR SALARIES DUE AND OWING TO ANY OF ITS LABORERS, SERV-
49 ANTS OR EMPLOYEES, FOR SERVICES PERFORMED BY THEM FOR SUCH LIMITED
50 LIABILITY COMPANY. BEFORE SUCH LABORER, SERVANT OR EMPLOYEE SHALL CHARGE
51 SUCH MEMBER FOR SUCH SERVICES, HE OR SHE SHALL GIVE NOTICE IN WRITING TO
52 SUCH MEMBER THAT HE OR SHE INTENDS TO HOLD SUCH MEMBER LIABLE UNDER THIS
53 SECTION. SUCH NOTICE SHALL BE GIVEN WITHIN ONE HUNDRED EIGHTY DAYS AFTER
54 TERMINATION OF SUCH SERVICES. AN ACTION TO ENFORCE SUCH LIABILITY SHALL
55 BE COMMENCED WITHIN NINETY DAYS AFTER THE RETURN OF AN EXECUTION UNSAT-
56 ISFIED AGAINST THE LIMITED LIABILITY COMPANY UPON A JUDGMENT RECOVERED

1 AGAINST IT FOR SUCH SERVICES. A MEMBER WHO HAS PAID MORE THAN HIS OR HER
2 PRO RATA SHARE UNDER THIS SECTION SHALL BE ENTITLED TO CONTRIBUTION PRO
3 RATA FROM THE OTHER MEMBERS LIABLE UNDER THIS SECTION WITH RESPECT TO
4 THE EXCESS SO PAID, OVER AND ABOVE HIS OR HER PRO RATA SHARE, AND MAY
5 SUE THEM JOINTLY OR SEVERALLY OR ANY NUMBER OF THEM TO RECOVER THE
6 AMOUNT DUE FROM THEM. SUCH RECOVERY MAY BE HAD IN A SEPARATE ACTION. AS
7 USED IN THIS SUBDIVISION, "PRO RATA" MEANS IN PROPORTION TO PERCENTAGE
8 OWNERSHIP INTEREST. BEFORE A MEMBER MAY CLAIM CONTRIBUTION FROM OTHER
9 MEMBERS UNDER THIS SECTION, HE OR SHE SHALL GIVE THEM NOTICE IN WRITING
10 THAT HE OR SHE INTENDS TO HOLD THEM SO LIABLE TO HIM OR HER.

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

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

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

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

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

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

39 5. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL OR SPECIAL LAW, NO
40 MONEYS SHALL BE AVAILABLE FROM THE FUND UNTIL A CERTIFICATE OF ALLO-
41 CATION AND A SCHEDULE OF AMOUNTS TO BE AVAILABLE THEREFOR SHALL HAVE
42 BEEN ISSUED BY THE DIRECTOR OF THE BUDGET, AND A COPY OF SUCH CERTIF-
43 ICATE FILED WITH THE COMPTROLLER. SUCH CERTIFICATE MAY BE AMENDED FROM
44 TIME TO TIME BY THE DIRECTOR OF THE BUDGET AND A COPY OF EACH SUCH
45 AMENDMENT SHALL BE FILED WITH THE COMPTROLLER.

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