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I N   A S S E M B L Y

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Introduced by M. of A. TITUS, HEASTIE, AUBRY, HOOPER, WRIGHT, FARRELL, DINOWITZ, PEOPLES-STOKES, MARKEY, KAVANAGH, ABINANTI, SEPULVEDA, BRAUNSTEIN, CLARK, DenDEKKER, FAHY, GOTTFRIED, JAFFEE, MAYER, ROSENTHAL, CAHILL, PICHARDO, COLTON, MORELLE, BRONSON, RUSSELL, SKARTADOS, JEAN-PIERRE, KAMINSKY, MOYA, RODRIGUEZ, WALKER, LINARES -- Multi-Sponsored by -- M. of A. BLAKE, COOK, CRESPO, DAVILA, GANTT, GLICK, KIM, LAVINE, LIFTON, MAGNARELLI, MOSLEY, NOLAN, ORTIZ, OTIS, PERRY, PRETLOW, RAMOS, ROBINSON, ROZIC, SCHIMEL, SIMOTAS, SOLAGES, STECK, THIELE, TITONE, WEINSTEIN, WEPRIN -- read once and referred to the Committee on Labor -- advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the labor law, the education law and the general municipal law, in relation to the minimum wage; to amend the public health law, in relation to home care worker wage parity; and to amend part H of chapter 59 of the laws of 2011, amending the public health law and other laws relating to known and projected department of health state fund medicaid expenditures, in relation to medicaid disbursements

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

1     Section 1. Paragraph (n) of subdivision 5 of section 651 of the labor  
2     law, as amended by chapter 481 of the laws of 2010, is amended to read  
3     as follows:

4     (n) by [a] THE federal[, state or municipal] government or political  
5     subdivision thereof. The exclusions from the term "employee" contained  
6     in this subdivision shall be as defined by regulations of the commis-  
7     sioner; or

8     S 2. Subdivision 6 of section 651 of the labor law, as amended by  
9     chapter 281 of the laws of 2002, is amended to read as follows:

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

LBD10738-05-6

6. "Employer" includes any individual, partnership, association, corporation, limited liability company, business trust, legal representative, STATE OR MUNICIPAL GOVERNMENT OR POLITICAL SUBDIVISION THEREOF, or any organized group of persons acting as employer.

S 3. Subdivision 1 of section 652 of the labor law, as amended by section 1 of part P of chapter 57 of the laws of 2013 is amended to read as follows:

1. Statutory. (A) Every employer shall pay to each of its employees for each hour worked a wage of not less than:

\$4.25 on and after April 1, 1991,

\$5.15 on and after March 31, 2000,

\$6.00 on and after January 1, 2005,

\$6.75 on and after January 1, 2006,

\$7.15 on and after January 1, 2007,

\$8.00 on and after December 31, 2013,

\$8.75 on and after December 31, 2014,

\$9.00 on and after December 31, 2015, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors

or such other wage as may be established in accordance with the provisions of this article.

(B) EMPLOYERS IN ALL AREAS OF THE STATE NOT COVERED BY PARAGRAPH (C) OF THIS SUBDIVISION SHALL PAY TO EACH OF ITS EMPLOYEES FOR EACH HOUR WORKED A WAGE OF NOT LESS THAN:

\$9.75 ON AND AFTER JULY 1, 2016,

\$10.75 ON AND AFTER DECEMBER 31, 2016,

\$11.75 ON AND AFTER DECEMBER 31, 2017,

\$12.75 ON AND AFTER DECEMBER 31, 2018,

\$13.75 ON AND AFTER DECEMBER 31, 2019,

\$14.50 ON AND AFTER DECEMBER 31, 2020, AND

\$15.00, AND ON AND AFTER DECEMBER 31, 2021 AND ON EACH FOLLOWING DECEMBER THIRTY-FIRST, THE COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED MINIMUM WAGE RATE BY INCREASING THE THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH DECEMBER THIRTY-FIRST USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U, OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, OR, IF GREATER, SUCH OTHER WAGE AS MAY BE ESTABLISHED BY FEDERAL LAW PURSUANT TO 29 U.S.C. SECTION 206 OR ITS SUCCESSORS OR SUCH OTHER WAGE AS MAY BE ESTABLISHED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

(C) EMPLOYERS IN A CITY WITH A POPULATION IN EXCESS OF ONE MILLION AND IN COUNTIES WITH A POPULATION OF NINE HUNDRED THOUSAND OR MORE THAT FALL WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT AS DEFINED IN SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES LAW, SHALL PAY TO EACH OF ITS EMPLOYEES FOR EACH HOUR WORKED A WAGE OF NOT LESS THAN:

\$10.50 ON AND AFTER JULY 1, 2016,

\$12.00 ON AND AFTER DECEMBER 31, 2016,

\$13.50 ON AND AFTER DECEMBER 31, 2017, AND

\$15.00 ON AND AFTER DECEMBER 31, 2018 AND ON EACH FOLLOWING DECEMBER THIRTY-FIRST, THE COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED MINIMUM WAGE RATE BY INCREASING THE THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH DECEMBER THIRTY-FIRST USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U, OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED

STATES DEPARTMENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, OR, IF GREATER, SUCH OTHER WAGE AS MAY BE ESTABLISHED BY FEDERAL LAW PURSUANT TO 29 U.S.C. SECTION 206 OR ITS SUCCESSORS OR SUCH OTHER WAGE AS MAY BE ESTABLISHED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

(D) THE RATES AND SCHEDULE ESTABLISHED IN SUBDIVISION (C) OF THIS SECTION SHALL NOT BE DEEMED TO BE THE MINIMUM WAGE FOR PURPOSES OF THE CALCULATIONS SPECIFIED IN SUBDIVISIONS ONE AND TWO OF SECTION FIVE HUNDRED TWENTY-SEVEN OF THIS CHAPTER.

S 4. Paragraph a of subdivision 3 of section 2023-a of the education law is amended by adding a new subparagraph 3-a to read as follows:

(3-A) ADD ANY INCREASE ATTRIBUTABLE TO INCREASES IN MINIMUM WAGE PURSUANT TO SECTION SIX HUNDRED FIFTY-TWO OF THE LABOR LAW.

S 5. Paragraph (c) of subdivision 3 of section 3-c of the general municipal law, as added by section 1 of part A of chapter 97 of the laws of 2011, is amended to read as follows:

(c) Each local government shall calculate the tax levy limit applicable to the coming fiscal year which shall be determined as follows:

(i) Ascertain the total amount of taxes levied for the prior fiscal year.

(ii) Multiply the result by the tax base growth factor, calculated pursuant to paragraph (b) of this subdivision, if any.

(iii) Add any payments in lieu of taxes that were receivable in the prior fiscal year.

(iv) ADD ANY INCREASES ATTRIBUTABLE TO INCREASES IN MINIMUM WAGE PURSUANT TO SECTION SIX HUNDRED FIFTY-TWO OF THE LABOR LAW.

(V) Subtract the tax levy necessary to support expenditures pursuant to subparagraph (i) of paragraph (g) of subdivision two of this section for the prior fiscal year, if any.

[(v)] (VI) Multiply the result by the allowable levy growth factor.

[(vi)] (VII) Subtract any payments in lieu of taxes receivable in the coming fiscal year.

[(vii)] (VIII) Add the available carryover, if any.

S 6. Subdivision 1 of section 92 of part H of chapter 59 of the laws of 2011, amending the public health law and other laws relating to known and projected department of health state fund medicaid expenditures, as amended by section 8 of part B of chapter 57 of the laws of 2015, is amended to read as follows:

1. For state fiscal years 2011-12 through 2016-17, the director of the budget, in consultation with the commissioner of health referenced as "commissioner" for purposes of this section, shall assess on a monthly basis, as reflected in monthly reports pursuant to subdivision five of this section known and projected department of health state funds medicaid expenditures by category of service and by geographic regions, as defined by the commissioner, and if the director of the budget determines that such expenditures are expected to cause medicaid disbursements for such period to exceed the projected department of health medicaid state funds disbursements in the enacted budget financial plan pursuant to subdivision 3 of section 23 of the state finance law, the commissioner of health, in consultation with the director of the budget, shall develop a medicaid savings allocation plan to limit such spending to the aggregate limit level specified in the enacted budget financial plan, provided, however, such projections may be adjusted by the director of the budget to account for any changes in the New York state federal medical assistance percentage amount established pursuant to the federal social security act, changes in provider revenues, reductions to

1 local social services district medical assistance administration, and  
2 beginning April 1, 2012 the operational costs of the New York state  
3 medical indemnity fund and state costs or savings from the basic health  
4 plan. Such projections may be adjusted by the director of the budget to  
5 account for increased or expedited department of health state funds  
6 medicaid expenditures as a result of a natural or other type of disas-  
7 ter, including a governmental declaration of emergency. FOR PURPOSES OF  
8 THIS SECTION, FOR PERIODS ON AND AFTER JULY 1, 2016, MEDICAID DISBURSE-  
9 MENTS SHALL NOT INCLUDE ANY ADDITIONAL EXPENDITURES RELATED TO INCREASES  
10 IN THE MINIMUM WAGE ESTABLISHED PURSUANT TO SECTION 652 OF THE LABOR  
11 LAW.

12 S 7. Section 3614-c of the public health law, as added by section 33  
13 of part H of chapter 59 of the laws of 2011, is amended to read as  
14 follows:

15 S 3614-c. Home care worker wage parity. 1. As used in this section,  
16 the following terms shall have the following meaning:

17 (a) "Living wage law" means any law enacted by Nassau, Suffolk or  
18 Westchester county or a city with a population of one million or more  
19 which establishes a minimum wage for some or all employees who perform  
20 work on contracts with such county or city.

21 (b) "Total compensation" means all wages and other direct compensation  
22 paid to or provided on behalf of the employee including, but not limited  
23 to, wages, health, education or pension benefits, supplements in lieu of  
24 benefits and compensated time off, except that it does not include  
25 employer taxes or employer portion of payments for statutory benefits,  
26 including but not limited to FICA, disability insurance, unemployment  
27 insurance and workers' compensation.

28 (c) "Prevailing rate of total compensation" means the average hourly  
29 amount of total compensation paid to all home care aides covered by  
30 whatever collectively bargained agreement covers the greatest number of  
31 home care aides in a city with a population of one million or more. For  
32 purposes of this definition, any set of collectively bargained agree-  
33 ments in such city with substantially the same terms and conditions  
34 relating to total compensation shall be considered as a single collec-  
35 tively bargained agreement.

36 (d) "Home care aide" means a home health aide, personal care aide,  
37 home attendant or other licensed or unlicensed person whose primary  
38 responsibility includes the provision of in-home assistance with activ-  
39 ities of daily living, instrumental activities of daily living or  
40 health-related tasks; provided, however, that home care aide does not  
41 include any individual (i) working on a casual basis, or (ii) who is a  
42 relative through blood, marriage or adoption of: (1) the employer; or  
43 (2) the person for whom the worker is delivering services, under a  
44 program funded or administered by federal, state or local government.

45 (e) "Managed care plan" means any managed care program, organization  
46 or demonstration covering personal care or home health aide services,  
47 and which receives premiums funded, in whole or in part, by the New York  
48 state medical assistance program, including but not limited to all Medi-  
49 caid managed care, Medicaid managed long term care, Medicaid advantage,  
50 and Medicaid advantage plus plans and all programs of all-inclusive care  
51 for the elderly.

52 (f) "Episode of care" means any service unit reimbursed, in whole or  
53 in part, by the New York state medical assistance program, whether  
54 through direct reimbursement or covered by a premium payment, and which  
55 covers, in whole or in part, any service provided by a home care aide,

1 including but not limited to all service units defined as visits, hours,  
2 days, months or episodes.

3 (G) "CASH PORTION OF THE MINIMUM RATE OF HOME CARE AID TOTAL COMPEN-  
4 SATION" MEANS THE MINIMUM AMOUNT OF HOME CARE AIDE TOTAL COMPENSATION  
5 THAT MAY BE PAID IN CASH WAGES, AS DETERMINED BY THE DEPARTMENT IN  
6 CONSULTATION WITH THE DEPARTMENT OF LABOR.

7 (H) "BENEFIT PORTION OF THE MINIMUM RATE OF HOME CARE AIDE TOTAL  
8 COMPENSATION" MEANS THE PORTION OF HOME CARE AIDE TOTAL COMPENSATION  
9 THAT MAY BE PAID IN CASH OR HEALTH, EDUCATION OR PENSION BENEFITS, WAGE  
10 DIFFERENTIALS, SUPPLEMENTS IN LIEU OF BENEFITS AND COMPENSATED TIME OFF,  
11 AS DETERMINED BY THE DEPARTMENT IN CONSULTATION WITH THE DEPARTMENT OF  
12 LABOR. CASH WAGES PAID PURSUANT TO INCREASES IN THE STATE OR FEDERAL  
13 MINIMUM WAGE CANNOT BE USED TO SATISFY THE BENEFIT PORTION OF THE MINI-  
14 MUM RATE OF HOME CARE AIDE TOTAL COMPENSATION.

15 2. Notwithstanding any inconsistent provision of law, rule or regu-  
16 lation, no payments by government agencies shall be made to certified  
17 home health agencies, long term home health care programs or managed  
18 care plans for any episode of care furnished, in whole or in part, by  
19 any home care aide who is compensated at amounts less than the applica-  
20 ble minimum rate of home care aide total compensation established pursu-  
21 ant to this section.

22 3. (a) The minimum rate of home care aide total compensation in a city  
23 with a population of one million or more shall be:

24 (i) for the period March first, two thousand twelve through February  
25 twenty-eighth, two thousand thirteen, ninety percent of the total  
26 compensation mandated by the living wage law of such city;

27 (ii) for the period March first, two thousand thirteen through Febru-  
28 ary twenty-eighth, two thousand fourteen, ninety-five percent of the  
29 total compensation mandated by the living wage law of such city;

30 (iii) for [all periods on and after] THE PERIOD March first, two thou-  
31 sand fourteen THROUGH MARCH THIRTY-FIRST TWO THOUSAND SIXTEEN, no less  
32 than the prevailing rate of total compensation as of January first, two  
33 thousand eleven, or the total compensation mandated by the living wage  
34 law of such city, whichever is greater;

35 (IV) FOR ALL PERIODS ON OR AFTER APRIL FIRST, TWO THOUSAND SIXTEEN,  
36 THE CASH PORTION OF THE MINIMUM RATE OF HOME CARE AIDE TOTAL COMPEN-  
37 SATION SHALL BE TEN DOLLARS OR THE MINIMUM WAGE AS LAID OUT IN PARAGRAPH  
38 (C) OF SUBDIVISION ONE OF SECTION SIX HUNDRED FIFTY-TWO OF THE LABOR  
39 LAW, WHICHEVER IS HIGHER. THE BENEFIT PORTION OF THE MINIMUM RATE OF  
40 HOME CARE AIDE TOTAL COMPENSATION SHALL BE FOUR DOLLARS AND NINE CENTS.

41 (b) The minimum rate of home care aide total compensation in the coun-  
42 ties of Nassau, Suffolk and Westchester shall be:

43 (i) for the period March first, two thousand thirteen through February  
44 twenty-eighth, two thousand fourteen, ninety percent of the total  
45 compensation mandated by the living wage law as set on March first, two  
46 thousand thirteen of a city with a population of a million or more;

47 (ii) for the period March first, two thousand fourteen through Febru-  
48 ary twenty-eighth, two thousand fifteen, ninety-five percent of the  
49 total compensation mandated by the living wage law as set on March  
50 first, two thousand fourteen of a city with a population of a million or  
51 more;

52 (iii) for the period March first, two thousand fifteen, through Febru-  
53 ary twenty-eighth, two thousand sixteen, one hundred percent of the  
54 total compensation mandated by the living wage law as set on March  
55 first, two thousand fifteen of a city with a population of a million or  
56 more;

1 (iv) for all periods on or after March first, two thousand sixteen,  
2 [the lesser of (i) one hundred and fifteen percent of the total compen-  
3 sation mandated by the living wage law as set on March first of each  
4 succeeding year of a city with a population of one million or more or;  
5 (ii) the total compensation mandated by the living wage law of Nassau,  
6 Suffolk or Westchester county, based on the location of the episode of  
7 care] THE CASH PORTION OF THE MINIMUM RATE OF HOME CARE AIDE TOTAL  
8 COMPENSATION SHALL BE TEN DOLLARS OR THE MINIMUM WAGE AS LAID OUT IN  
9 PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION SIX HUNDRED FIFTY-TWO OF THE  
10 LABOR LAW, WHICHEVER IS HIGHER. THE BENEFIT PORTION OF THE MINIMUM RATE  
11 OF HOME CARE AIDE TOTAL COMPENSATION SHALL BE THREE DOLLARS AND TWENTY-  
12 TWO CENTS.

13 4. [Any portion of the minimum rate of home care aide total compen-  
14 sation attributable to health benefit costs or payments in lieu of  
15 health benefits, and paid time off, as established pursuant to subdivi-  
16 sion three of this section shall be superseded by the terms of any  
17 employer bona fide collective bargaining agreement in effect as of Janu-  
18 ary first, two thousand eleven, or a successor to such agreement, which  
19 provides for home care aides' health benefits through payments to joint-  
20 ly administered labor-management funds.

21 5.] The terms of this section shall apply equally to services provided  
22 by home care aides who work on episodes of care as direct employees of  
23 certified home health agencies, long term home health care programs, or  
24 managed care plans, or as employees of licensed home care services agen-  
25 cies, limited licensed home care services agencies, or under any other  
26 arrangement.

27 [6.] 5. No payments by government agencies shall be made to certified  
28 home health agencies, long term home health care programs, or managed  
29 care plans for any episode of care without the certified home health  
30 agency, long term home health care program, or managed care plan having  
31 delivered prior written certification to the commissioner, on forms  
32 prepared by the department in consultation with the department of labor,  
33 that all services provided under each episode of care are in full  
34 compliance with the terms of this section and any regulations promulgat-  
35 ed pursuant to this section.

36 [7.] 6. If a certified home health agency or long term home health  
37 care program elects to provide home care aide services through contracts  
38 with licensed home care services agencies or through other third  
39 parties, provided that the episode of care on which the home care aide  
40 works is covered under the terms of this section, the certified home  
41 health agency, long term home health care program, or managed care plan  
42 must obtain a written certification from the licensed home care services  
43 agency or other third party, on forms prepared by the department in  
44 consultation with the department of labor, which attests to the licensed  
45 home care services agency's or other third party's compliance with the  
46 terms of this section. Such certifications shall also obligate the  
47 certified home health agency, long term home health care program, or  
48 managed care plan to obtain, on no less than a quarterly basis, all  
49 information from the licensed home care services agency or other third  
50 parties necessary to verify compliance with the terms of this section.  
51 Such certifications and the information exchanged pursuant to them shall  
52 be retained by all certified home health agencies, long term home health  
53 care programs, or managed care plans, and all licensed home care  
54 services agencies, or other third parties for a period of no less than  
55 ten years, and made available to the department upon request.

[8.] 7. The commissioner shall distribute to all certified home health agencies, long term home health care programs, and managed care plans official notice of the minimum rates of home care aide compensation at least one hundred twenty days prior to the effective date of each minimum rate for each social services district covered by the terms of this section.

[9.] 8. The commissioner is authorized to promulgate regulations, and may promulgate emergency regulations, to implement the provisions of this section.

[10.] 9. Nothing in this section should be construed as applicable to any service provided by certified home health agencies, long term home health care programs, or managed care plans except for all episodes of care reimbursed in whole or in part by the New York Medicaid program.

[11.] 10. No certified home health agency, managed care plan or long term home health care program shall be liable for recoupment of payments for services provided through a licensed home care services agency or other third party with which the certified home health agency, long term home health care program, or managed care plan has a contract because the licensed agency or other third party failed to comply with the provisions of this section if the certified home health agency, long term home health care program, or managed care plan has reasonably and in good faith collected certifications and all information required pursuant to subdivisions [six and seven] FIVE AND SIX of this section.

S 8. Notwithstanding any inconsistent provision or policy to the contrary, any increase attributable to the increase in the minimum wage established pursuant to section 652 of the labor law, shall be excluded from the calculation of any policy of the state spending limitations in the enacted budget financial plan pursuant to subdivision 3 of section 23 of the state finance law.

Notwithstanding any inconsistent provision of law, any program or service including not-for-profits funded by New York state through the department of the office of mental health, office for people with developmental disabilities, office of alcoholism and substance abuse services, department of health, office of children and family services, office of temporary and disabilities assistance, the state office for the aging and the department of labor shall be adjusted to reflect the increase in labor costs related to the minimum wage pursuant to section 652 of the labor law.

S 9. Severability clause. If an amendment made by section four or section five of this act or their application to any person, legal entity, or circumstance is held invalid by a court of competent jurisdiction, the remainder of this act or the application of such amendment to other persons, legal entities or circumstances shall not be effected.

S 10. This act shall take effect immediately; provided, however, that sections four and five of this act shall first apply to school district budgets and the budget adoption process for the 2016 - 2017 school year; provided, further, that section five of this act shall first apply to the levy of taxes by local governments for the fiscal year that begins in 2017; provided, further, that the amendments to paragraph a of subdivision 3 of section 2023-a of the education law made by section four of this act shall not affect the repeal of such section and shall be deemed repealed therewith; provided, further, that the amendments to paragraph (c) of subdivision 3 of section 3-c of the general municipal law made by section five of this act shall not affect the repeal of such section and shall be deemed repealed therewith.