STATE OF NEW YORK

2766--C

Cal. No. 1110

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

Introduced by Sens. RAMOS, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRISPORT, BROOKS, COMRIE, GAUGHRAN, GOUNARDES, HINCHEY, HOYLMAN, JACKSON, LIU, MANNION, MATTERA, MAY, MAYER, MYRIE, PARKER, REICHLIN-MELNICK, RIVERA, RYAN, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the labor law and the general business law, in relation to actions for non-payment of wages

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The labor law is amended by adding a new section 198-e to read as follows:

§ 198-e. Construction industry wage theft. 1. A contractor making or taking a construction contract shall assume liability for any debt resulting from an action under section one hundred ninety-eight of this article, owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the contractor or its subcontractors for the wage claimant's performance of labor.

2. No agreement or release by an employee or subcontractor to waive liability assigned to a contractor under this section shall be valid except as otherwise provided herein. The provisions of this section shall not be deemed to impair the rights of a contractor to maintain an action against a subcontractor for amounts for owed wages that are paid by a contractor pursuant to this section.

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

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3. Notwithstanding any other provision of law, the remedies available for a claim pursuant to subdivision one of this section shall only be civil and administrative actions.

4. In the case of a private civil action by an employee, such employee may designate any person, organization or collective bargaining agent authorized to file a complaint with the commissioner pursuant to section one hundred ninety-six-a of this article, to make a wage claim on his or her behalf.

5. In the case of an action against a subcontractor, the contractor shall be considered jointly and severally liable for any unpaid wages, benefits, wage supplements, and any other remedies available pursuant to the requirements of section one hundred ninety-eight of this article.

6. Nothing herein shall preclude the attorney general from bringing a civil action to collect unpaid wages and penalties on behalf of employees pursuant to this section.

7. A contractor or any other person shall not evade, or commit any act that negates, the requirements of this section, provided, however, that this section shall not be deemed to prohibit a contractor or subcontractor from establishing by contract or enforcing any other lawful remedies against a subcontractor it hires for liability created by violation of this section, provided that such contract or arrangement does not diminish the right of employees to bring an action under the provisions of this section.

8. As used in this section:

a. "Construction contract" means a written or oral agreement for the construction, reconstruction, alteration, maintenance, moving or demolition of any building, structure or improvement, or relating to the excavation of or other development or improvement to land. For purposes of this section, a construction contract shall not include: any contract which is subject to article eight of this chapter; a home improvement contract for the performance of a home improvement between a home improvement contractor and the owner of an owner-occupied dwelling; and a home construction contract for one- or two-family dwelling units except where such contract or contracts results in the construction of more than ten one- or two-family owner-occupied dwellings at one project site annually.

b. "Contractor" means any person, firm, partnership, corporation, association, company, organization or other entity, including a construction manager, general or prime contractor, joint venture, or any combination thereof, which enters into a construction contract with an owner.

c. "Owner" means any person, firm, partnership, corporation, company, association or other organization or other entity, or a combination of any thereof, (with an ownership interest, whether the interest or estate is in fee, as vendee under a contract to purchase, as lessee or another interest or estate less than fee) that causes a building, structure or improvement, new or existing, to be constructed, altered, repaired, maintained, moved or demolished or that causes land to be excavated or otherwise developed or improved.

d. "Subcontractor" means any person, firm, partnership, corporation, company, association, organization or other entity, or any combination thereof, which is a party to a contract with a contractor, and/or party to a contract with the contractor's subcontractors at any tier to perform any portion of work within the scope of the contractor's construction contract with the owner, including where the subcontractor has no direct privity of contract with the contractor.

9. Any liability assigned to a contractor pursuant to the provisions of this section shall be applicable for any claims occurring no later than three years prior to the initiation of such claim in a court of competent jurisdiction or the commencement of a civil action brought forth by the attorney general or department. The provisions of this section shall not be deemed to diminish, impair, or otherwise infringe on any other rights of an employee provided pursuant to this chapter, including the right of an employee to bring an action against any employer under the provisions of section one hundred ninety-eight of this article.

10. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement. The provisions of this section may be waived by a collective bargaining agreement with a bona fide building and construction trade labor organization which has established itself, and/or its affiliates, as the collective bargaining representative for persons performing work on a project, provided that for such waiver to be valid, it shall explicitly reference this section. Provided, however, that such waiver shall not diminish or impair the rights of an employee provided under any other section of this chapter.

§ 2. The general business law is amended by adding a new section 756-f to read as follows:

§ 756-f. Wage theft prevention and enforcement. 1. Upon request of a contractor, or a contractor's subcontractor, to any subcontractor which performs any portion of work within the scope of the contractor's construction contract with an owner, such subcontractor shall provide certified payroll records which, at a minimum, contain all lawfully required information required for all employees providing labor on the project. Such payroll records shall contain sufficient information to apprise the contractor or subcontractor of such subcontractor's payment status in paying wages and making any applicable fringe or other benefit payments or contributions to a third party on its employee's behalf. Payroll records shall be marked or redacted to an extent only to prevent disclosure of an individual's full social security number but shall provide the last four digits of the social security number.

2. Upon request of a contractor, or a contractor's subcontractor, to any subcontractor which performs any portion of work within the scope of the contractor's construction contract with an owner, such subcontractor shall provide: (a) the names of all workers of such subcontractor on the project, including the names of all those designated as independent contractors; (b) when applicable, the name of the contractor's subcontractor with whom such subcontractor is under contract; (c) the anticipated contract start date; (d) the scheduled duration of work; (e) when applicable, local unions with whom such subcontractor is a signatory contractor; and (f) the name, address and phone number of a contact for such subcontractor.

3. Failure to timely comply with a request for information as provided herein shall be a basis for a contractor to withhold payments owed to a subcontractor at any tier.

4. Unless otherwise required by law, a contractor or subcontractor shall not communicate an individual's personal identifying information to the general public. For purposes of this section, "personal identifying information" shall have the same definition as provided for in paragraph (d) of subdivision one of section two hundred three-d of the labor law.

5. For the purposes of this section, "contractor" means any person, firm, partnership, corporation, association, company, organization or other entity, including a construction manager, general or prime contractor, joint venture, or any combination thereof, which enters into a construction contract with an owner.

6. For the purposes of this section, "owner" means any person, firm, partnership, corporation, company, association or other organization or other entity, or a combination of any thereof, (with an ownership interest, whether the interest or estate is in fee, as vendee under a contract to purchase, as lessee or another interest or estate less than fee) that causes a building, structure or improvement, new or existing, to be constructed, altered, repaired, maintained, moved or demolished or that causes land to be excavated or otherwise developed or improved.

7. For the purposes of this section, "subcontractor" means any person, firm, partnership, corporation, company, association, organization or other entity, or any combination thereof, which is a party to a contract with a contractor, and/or party to a contract with the contractor's subcontractors at any tier, to perform any portion of work within the scope of the contractor's construction contract with the owner, including where the subcontractor has no direct privity of contract with the contractor.

§ 3. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 4. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to construction contracts entered into, renewed, modified or amended on or after such effective date.